

1 TEXAS DEPARTMENT OF AGRICULTURE
2 AGRICULTURAL MARKETING SERVICE
3 7 CFR PART 205
4 NATIONAL ORGANIC PROGRAM (NOP)
5 ACCESS TO PASTURE (LIVESTOCK); PROPOSED RULE
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9 LISTENING SESSION - DECEMBER 8, 2008
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11 CONDUCTED BY MR. RICHARD H. MATHEWS,
12 CHIEF, STANDARDS DEVELOPMENT AND REVIEW BRANCH,
13 NATIONAL ORGANIC PROGRAM,
14 TRANSPORTATION AND MARKETING PROGRAMS, USDA-AMS-TMP-NOP
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25 PANHANDLE COURT REPORTERS, LLC

1 ATTENDANCE ACCORDING TO SIGN-IN SHEET:

- 2 1. Tim Baker, Dairy Employee
- 3 2. Robert Beville, Beef
- 4 3. Dave Bellows, Feed Buyer
- 5 4. Brian Boehning, Dairy Farmer
- 6 5. Tiffany Boehning, Dairy Farmer
- 7 6. Lewis Britt, Congressman Mac Thornberry
- 8 7. David R. Brown, PhD, Select Milk Producers, Inc.
- 9 8. Emalee Buttrey, Texas AgriLife Extension, PhD
- 10 Student
- 11 9. Mel Coleman, Producer/Processor
- 12 10. Drew DeBerry, Texas Department of Agriculture
- 13 11. Jack Dees, Beef Consultant
- 14 12. Donald DeJong, Select Milk Producers, Inc.
- 15 13. Blain Eubank, Producer
- 16 14. Sally Keefe, Dairy Producer, Aurora Organic Dairy
- 17 15. Bo Kizziar, Texas Cattle Feeders
- 18 Association/Feedlot Mgr.
- 19 16. Johnny L. Lieb, J&L Organic Farm
- 20 17. Steve Martin, Dairy Nutrition and Management
- 21 Consulting
- 22 18. Jim McDonald, Texas AgriLife Research
- 23 19. Leslie McKinnon, Texas Department of Agriculture
- 24 20. Charlie Moore, Maverick Ranch, Cattle Producer and
- 25 Organic Process Plant
- 26 21. Jason Osterstock, Texas AgriLife Research
- 27 22. Trey G. Powers, Texas Comptrollers Office
- 28 23. Travis Price, Dairy Farmer
- 29 24. Alfred Reeb, New Mexico Department of Agriculture
- 30 25. Paul Reynolds, Consulting EAE
- 31 26. Jason Skaggs, Texas and Southwestern Cattle Raisers
- 32 Association
- 33 27. Jim M. Sweeten, Texas AgriLife Research
- 34 28. James Terrell, Select Milk Producers, Inc.
- 35 29. Steve Warshawer, La Montanita Cooperative
- 36 30. Evan Whitley, Dakota Beef
- 37 31. Ross Wilson, Texas Cattle Feeders Association
- 38 32. Josh Winegarner, Texas Cattle Feeders Association
- 39 33. Ben Yale, Select Milk Producers, Inc.

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1 DECEMBER 8, 2008 - USDA LISTENING SESSION

2 MR. MATHEWS: Good afternoon. If you would
3 all have a seat, please. First of all, I would like to
4 double check, make sure that everyone in attendance has
5 signed in. Anyone who hasn't signed in? Good. We've
6 got one signing up right now.

7 Okay. The facilities for the ladies, you
8 go out here, turn right and straight down the hall; for
9 the men, you go down the hall, you take another right,
10 it will be on your left.

11 My name is Richard Mathews. I'm going to
12 give you a power point presentation. Essentially I'm
13 going to just read it, and this is what I've done at
14 each of the listening sessions. This is the fourth one
15 in a series of five. Once I'm done with the power point
16 presentation, then I'm going to turn it over to you to
17 come to this microphone so that you can express your
18 likes, dislikes, concerns and comments for how we can
19 make this proposed rule more workable for you as we move
20 into the final rule stage.

21 Right now, the livestock provisions are
22 broken up into four sections, 205.236, Origin of
23 Livestock; 205.237, Livestock Feed; 205.238, Livestock
24 Healthcare Practice Standard; and 205.239, Livestock
25 Living Conditions.

1 You will note, as we go through the
2 presentation, the text in the dark letters is existing
3 language. In these first four sections there's just a
4 minor amount of proposed wording for Section 205.236;
5 205.237, there's significant proposed language; 205.238,
6 there's no proposed changes; 205.239, there's
7 significant proposed language change. 205.240, Pasture
8 Practice Standard, is all new language; it's a proposed
9 new section to the regulations.

10 We'll start with 205.237, "Livestock Feed.
11 The producer of an organic livestock operation must
12 provide livestock with a total feed ration composed of
13 agricultural products, including pasture and forage,
14 that are organically produced by operations certified
15 through the NOP, except as provided in 205.236(a)(2)(i),
16 and if applicable, organically handled by operations
17 certified through the NOP.

18 That Section 205.236(a)(2)(i) is an
19 exception that came out of the Harvey lawsuit, and it
20 actually provides that an operation, during their third
21 year of transition, can actually feed their animals
22 agricultural products from that land that is in the
23 third year of transition, otherwise it's all organic.

24 And the thing about the third year is that
25 it's not organic yet, but it's in the third year of

1 transition.

2 There is an exception; "Except that
3 nonsynthetic substances and synthetic substances allowed
4 under 205.603 may be used as feed additives and
5 supplements."

6 We are proposing a change to that language
7 to read, "Except that synthetic substances allowed under
8 205.603 and nonsynthetic substances may be used as feed
9 additives and supplements provided that all agricultural
10 ingredients in such additives and supplements shall have
11 been produced and handled organically."

12 The reason for the change -- for the
13 exception is that you'll note that it used to read
14 "nonsynthetic substances and synthetic substances
15 allowed under 205.603." People were confusing that,
16 thinking that there were nonsynthetic substances listed
17 in Section 205.603. There are not. So it's just a
18 reversing so that they see it's synthetics listed in 603
19 and the nonsynthetic substances.

20 Paragraph B, "The producer of an organic
21 operation must not use animal drugs, including hormones,
22 to promote growth; provide feed supplements or additives
23 in amounts above those needed for adequate nutrition and
24 health maintenance for the species at its specific stage
25 of life; feed plastic pellets for roughage; feed

1 formulas containing urea or manure; feed mammalian or
2 poultry slaughter stock by-products to mammals or
3 poultry; use feed additives and feed supplements in
4 violation of the Federal Food, Drug and Cosmetic Act."

5 Seven and eight are text that have been
6 proposed for insertion; "Provide feed or forage to which
7 anyone at any time has added an antibiotic." As we all
8 know, antibiotics are already prohibited.

9 Number 8, "Prevent, withhold, restrain or
10 otherwise restrict ruminant animals from actively
11 obtaining feed grazed from pasture during the growing
12 season except for conditions as described under
13 205.239(c).

14 "During the growing season, producers shall
15 provide not more than an average of 70 percent of the
16 ruminant's dry matter demand from dry matter fed. Dry
17 matter fed does not include dry matter grazed from
18 vegetation rooted in pasture. Producers shall, once a
19 month, on a monthly basis:

20 "1. Document each feed ration, i.e. for
21 each type of animal, each class of animals' intended
22 daily diet showing all ingredients, daily pounds of each
23 ingredient per animal, each ingredient's percentage of
24 the total ration, the dry matter percentage for each
25 ingredient and the dry matter pounds for each

1 ingredient;

2 "Document the daily dry matter demand for
3 each class of animals using the formula: Average weight
4 per animal in pounds times .03 equals the pounds dry
5 matter per head per day times the number of animals
6 equals total dry matter demand in pounds per day;

7 "3. Document how much dry matter is fed
8 daily to each class of animal;

9 "4. Document the percentage of dry
10 matter fed daily to each class of animal using the
11 formal: Dry matter fed divided by dry matter demand in
12 pounds per day times 100 equals the percent dry matter
13 fed."

14 Section 205.239, "Livestock Living
15 Conditions. The producer of an organic livestock
16 operation must establish and maintain year-round
17 livestock living conditions which accommodate the health
18 and natural behavior of the animals, including those
19 listed in Paragraphs (a)(1) through (a)(3) of this
20 section. Further, producers shall not prevent, withhold
21 restrain or otherwise restrict animals from being
22 outdoors except as otherwise provided in Paragraphs B
23 and C of this section.

24 "Producers shall also provide:

25 "1. Year-round access for all animals to

1 the outdoors, shade, shelter, exercise areas, fresh air,
2 water for drinking, indoors and out, direct sunlight
3 suitable to the species, its stage of life, the climate
4 and the environment."

5 Number 2, Access to Pasture for Ruminants,
6 we're proposing to rewrite that to read:

7 "2. For all ruminants, continuous
8 year-round management on pasture except as otherwise
9 provided in Paragraph C of this section for, (i) grazing
10 throughout the growing season, and, (ii) access to the
11 outdoors throughout the year including during the
12 non-growing season. Dry lots and feedlots are
13 prohibited."

14 Number 3 currently reads, "Appropriate
15 Clean, Dry Bedding. Use of bedding that's typically
16 consumed by the animal species must comply with the feed
17 requirements of Section 205.237."

18 We are proposing to have it now read:

19 "3. Appropriate Clean, Dry Bedding. When
20 hay, straw, ground cobs or other crop matter typically
21 fed to the animal species is used as bedding, it must
22 comply with the feed requirements of Section 205.237;

23 "4. Shelter designed to allow for natural
24 maintenance, comfort behaviors and opportunity to
25 exercise, temperature level, ventilation and air

1 circulation suitable to the species and reduction of
2 potential for livestock injury."

3 Paragraph B, the first line of Paragraph B
4 currently reads, "The producer of an organic livestock
5 operation may provide temporary confinement for an
6 animal because of."

7 We propose that that first paragraph now
8 read, "The producer of an organic livestock operation
9 may temporarily deny a non-ruminant animal access to the
10 outdoors because of", and then we go on to list the
11 exceptions which are:

12 "1. Inclement weather;

13 "2. The animal's stage of life." That
14 used to say "stage of production" where we've inserted
15 the word "life";

16 "3. Conditions under which the health,
17 safety and wellbeing of the animal could be jeopardized;

18 "4. Risk to soil or water quality."

19 And then we would insert a Paragraph C,
20 "The producer of an organic livestock operation may
21 temporarily deny a ruminant animal pasture under the
22 following conditions:

23 "1. When the animal is segregated for
24 treatment of illness or injury. The various life stages
25 such as lactation are not an illness or injury;

1 "2. One week prior to parturition --
2 birthing, parturition and up to one week after
3 parturition;

4 "3. In the case of newborns, for up to six
5 months, after which they must be on pasture and may no
6 longer be individually housed;

7 "4. In the case of goats, during periods
8 of inclement weather.

9 "5. In the case of sheep, for short
10 periods for shearing;

11 "6. In the case of dairy animals, for
12 short periods daily for milking. Milking must be
13 scheduled in a manner to ensure sufficient grazing time
14 to provide each animal with an average dry matter intake
15 from grazing of not less than 30 percent throughout the
16 growing season. Milking frequencies or duration
17 practices cannot be used to deny dairy animals pasture.

18 "D. Ruminants must be provided with:

19 "1. A lying area with well-maintained
20 clean, dry bedding which complies with Paragraphs --
21 Paragraph (a)(3) of this section during periods of
22 temporary housing provided due to temporary denial of
23 pasture during conditions listed in Paragraphs (c)(1)
24 through (c)(5) of this section;

25 "Yards and passageways kept in good

1 condition and well drained;

2 "3. Shade, and in the case of goats,
3 shelter open on at least one side;.

4 "4. Water at all times except during short
5 periods for milking or shearing. Such water must be
6 protected from foul;

7 "5. Feeding and watering equipment that
8 are designed, constructed and placed to protect from
9 fouling, such equipment must be cleaned weekly.

10 "6. In the case of newborn, hay in the
11 rack, off the ground, beginning seven days after birth
12 unless on pasture and pasture for grazing in compliance
13 with 205.240(a), not later than six months after birth."

14 Because we've added C and D, we had to
15 change C to E. There's no other change. That reads,
16 "The producer of an organic livestock operation must
17 manage manure in a manner that does not contribute to
18 contamination of crops, soil or water, ponds and
19 streams, by heavy metals or pathogenic water organisms
20 and optimizes recycling of nutrients.

21 "Paragraph F: The producer of an organic
22 livestock operation must manage outdoor access areas,
23 including pastures, in a manner that does not put soil
24 or water quality at risk. This includes the use of
25 fences and buffer zones to prevent ruminants and their

1 waste products from entering ponds, streams and other
2 bodies of water. Buffers on sides shall be extensive
3 enough in full consideration of the physical features of
4 the site to prevent the waste products of ruminants from
5 entering ponds, streams and other bodies of water."

6 Section 205.240, Pasture Practice Standard,
7 would read: "The producer of an organic livestock
8 operation must, for all ruminant livestock on the
9 operation, demonstrate, through audible records in the
10 organic system's plan, a functioning management plan for
11 pasture that meets all requirements of Sections 205.200
12 through 205.240.

13 "A. Pasture must be managed as a crop in
14 full compliance with Sections 205.200 through 205.206;

15 "B. The producer must develop and annually
16 update a comprehensive pasture plan for inclusion in the
17 producer's organic systems plan. When there is no
18 change to the previous year's comprehensive pasture
19 plan, the certified operation may resubmit the previous
20 year's comprehensive pasture plan.

21 "The comprehensive pasture plan must
22 include a detailed description of:

23 "1. Crops to be grown in the pasture and
24 hay-making system;

25 "2. Cultural practices, including but not

1 limited to, varying the crops and their maturity dates
2 in the pasture system to be used to ensure pasture of a
3 sufficient quality and quantity is available to graze
4 throughout the growing system and to provide all
5 ruminants under the organic system's plan with an
6 average of not less than 30 percent of their dry matter
7 intake from grazing throughout the growing season;

8 "3. The hay-making system;

9 "4. The location of pasture and hay-making
10 fields, including maps showing the pasture and
11 hay-making system and giving each field its own
12 identity;

13 "5. The types of grazing methods to be
14 used in the pasture system;

15 "6. The location and types of fences and
16 the location and source of shade and water;

17 "7. The soil fertility, seeding and crop
18 rotation systems;

19 "8. The pest, weed and disease control
20 practices;

21 "9. The erosion control and protection of
22 natural wetlands, riparian areas and the soil and water
23 quality practices;

24 "Pasture and soil sustainability practices;

25 "11. Restoration of pastures practices."

1 "D. The pasture system must include a
2 sacrificial pasture for grazing to prevent the other
3 pastures from excessive damage during periods when
4 saturated soil conditions render the pastures too wet
5 for animals to graze. The sacrificial pasture must be:

6 "1. Sufficient in size to accommodate all
7 animals in the herd without crowding;

8 "2. Located where;

9 (i) Soils have good trafficability;

10 (ii) Well drained;

11 (iii) There is a low risk of soil erosion;

12 (iv) There is a low or no potential of
13 manure runoff;

14 (v) Surrounded by vegetated areas;

15 (vi) easily restored.

16 "3. Managed to:

17 (i) Provide feed value;

18 (ii) Maintain or improve soil, water and
19 vegetative resources.

20 "4. Restored through active pasture
21 management.

22 "Paragraph E, in addition to the above,
23 producers must manage pasture to comply with all
24 applicable requirements of Sections 205.236 through
25 205.239."

1 Now, there's also changes made in the
2 definitions section. The definition for "crop", we are
3 proposing to make some changes to it. It currently
4 reads: "Crop; a plant or part of a plant intended to be
5 marketed as an agricultural product or fed to
6 livestock." We propose that it now read: Crop;
7 pastures, sod, cover crops, green manure crops, catch
8 crops and any plant or part of a plant intended to be
9 marketed as an agricultural product, fed to livestock or
10 used in the field to manage nutrients and soil
11 fertility."

12 We propose to define: "Dry matter; the
13 amount of a feedstuff remaining after all the free
14 moisture is evaporated out."

15 We would define: "Dry lot; a confined area
16 that may be covered with concrete, but that has no
17 vegetative cover."

18 We would define: "Feedlot; a confined area
19 for the controlled feeding of ruminants."

20 We would define: "Graze; as (1) the
21 consumption of standing forage by livestock; (2) to put
22 livestock to feed on standing forage."

23 "Grazing" would be defined as "to graze."

24 We propose to define "growing season" as
25 the period of time between the average date of the last

1 killing frost in the spring and the average date of the
2 first killing frost in the fall or early winter in the
3 local area of production. This represents a temperature
4 threshold of 28 degrees Fahrenheit, minus 3.9 degrees
5 Celsius or lower at a frequency of five years in ten.
6 Growing season may range from 121 days to 365 days."

7 We've proposed to define "inclement
8 weather" as "weather that is violent or characterized by
9 temperatures, high or low, that can kill or cause
10 permanent physical harm to a given species of
11 livestock."

12 And we propose to define "killing frost; a
13 frost that takes place at temperatures between 25
14 degrees and 28 degrees Fahrenheit, minus 2.2 and minus
15 3.9 degrees Celsius, for a period sufficiently severe to
16 end the growing season or delay its beginning."

17 We define "sacrificial pasture" as "a
18 pasture or pastures within the pasture system of
19 sufficient size to accommodate all animals in the herd,
20 without crowding, where animals are kept for short
21 periods during saturated soil conditions to confine
22 pasture damage to an area where potential environmental
23 impacts can be controlled. This pasture is then
24 deferred from grazing until it has been restored through
25 active pasture management. Sacrificial pastures are

1 located where soils have good trafficability, are well
2 drained, have low risk of soil erosion, have low or no
3 potential of manure runoff, are surrounded by vegetated
4 areas, and are easily restored. A sacrificial pasture
5 is land used for livestock raising that is managed to
6 provide feed value and maintain or improve soil, water
7 and vegetative resources. This is not a dry lot or
8 feedlot."

9 "Temporary" and "temporarily" is defined
10 as: "Occurring for a limited time only. For example,
11 overnight, throughout a storm, during a period of
12 illness, a period of time specified by the administrator
13 when granting a temporary variance, not permanent or
14 lasting."

15 The definition of "livestock" currently
16 reads: "Any cattle, sheep, goats, swine, poultry,
17 equine animals used for food or in the production of
18 food, fiber, feed or other agriculture-based consumer
19 products, wild or domesticated game or other non-plant
20 life, except such term shall not include aquatic animals
21 or bees for the production of food, fiber, feed or other
22 agriculture-based consumer products."

23 The current definition of "livestock"
24 actually is not consistent with the definition that is
25 in the statute so we're proposing to change the

1 definition of "livestock" to read as it does in the
2 statute. "Livestock: Any bee, cattle, sheep, goats,
3 swine, poultry, equine animals used for food or in the
4 production of food, fiber, feed or other
5 agriculture-based consumer products, fish used for food,
6 wild or domesticated game or other non-plant life."

7 In this section, 205.102, use of the term
8 "organic", if Section 205.240 is added to the final
9 rule, this section has to be changed to read: "Produced
10 in accordance with the requirements specified in
11 Section 205.101 or Sections 205.202 through 205.207 or
12 205.236 through 205.240."

13 Right now that 205.240 reads: "205.239 and
14 all other applicable requirements of Part 205."

15 Anytime that we make a change to a section,
16 we have to go and see if the number shows up someplace
17 else, so that's the reason for the change in that one.

18 Section 205.236, Origin of Livestock,
19 Paragraph 3 or iii, I guess, "Once an entire distinct
20 herd has been converted to organic production, all dairy
21 animals shall be under organic management for the last
22 third of gestation." We got a lot of questions about
23 that, a lot of misunderstanding, so we're proposing to
24 reword it to say, "Once an operation has been certified
25 for organic production, using the exception in Paragraph

1 (a)(2)(i) or (ii) of this section, all dairy animals
2 brought onto the operation shall be under organic
3 management for the last third of gestation."

4 That completes the slides, so at this point
5 I'll turn the lights back up and give each of you an
6 opportunity to come up and present.

7 MR. DeBERRY: I won't be shy. Where do you
8 want me?

9 MR. MATHEWS: When you come up, I'd like
10 your name and tell me something about your operation and
11 then go ahead and make your presentation.

12 MR. DeBERRY: Great. I'm Drew DeBerry.
13 I'm with the Texas Department of Agriculture
14 representing Mr. Staples who wasn't able to be here
15 today. Thank you for doing the listening session here
16 in Amarillo and for responding to our many requests to
17 hear our -- hear our side of this issue.

18 I think you'll find most of my comments
19 have to do with regional differences. And I would point
20 out that in reading through the New York transcript, I
21 preferred your presentation there more than this one
22 because you -- in that one, you seemed more intimate and
23 casual with the crowd to tell why some of these
24 regulations were being proposed.

25 Texas was one of the very first states to

1 develop an organic certification program back in 1987,
2 and ever since then, we've supported and continue to
3 support, a clear and high standard for organic products.
4 As a result of various industry efforts and government
5 efforts, the organic industry has experienced
6 exceptional growth and continued availability of
7 affordable organic products that's important to that
8 consumer confidence.

9 That's why I'm here today to urge USDA to
10 not use your rule-making authority to put a strangle
11 hold on a sector of our economy that is growing each
12 day. As with all rule making, it's important -- and I
13 hate for you to have to stand up there the whole -- I'm
14 not going to go very long, but by the time we all get
15 done, please have a seat if you would like.

16 Any proposed changes should apply to all
17 sections of the country and all sectors of the organic
18 livestock industry. Pasture access can be, should be
19 and is currently a standard for organic livestock
20 production, but the methodology outlined in the proposed
21 rule mandating "one size fits all" requirements is not
22 the best approach.

23 The determination of dry matter intake
24 based on calculating theoretical dry matter demand is
25 inaccurate and is based on an artificial average of

1 three percent of an animal's body weight. There are
2 many factors which I have listed here, but I'll save us
3 the time, that affect the animal's feed intake that
4 should be taken into account if we're going to go down
5 this road.

6 Another problem with the DMI provision is
7 the definition of "growing season" from last spring
8 frost to first fall frost. Can an animal truly get 30
9 percent of their dry matter intake from pasture the day
10 after the last -- the last spring frost?

11 Also here in Texas, during the heat of
12 summer, native grassland and rangeland goes through a
13 summer dormancy period which -- in which growth is
14 negligible. It's unfair to establish a rule that is
15 appropriate for the climate in some regions of the
16 country but not for others. The proposed method of
17 estimating DMI is seriously flawed and should be removed
18 from the burdensome -- from the rule.

19 The monthly recordkeeping requirement and
20 calculation of DMI is overly burdensome both for the
21 livestock producer and for the inspector who has to --
22 and the inspector to verify the pasture requirement is
23 met.

24 If the NOP does not eliminate the DMI
25 calculation, it should, at the very least, more

1 realistically base the type -- based on the type and
2 class of animal and somehow factor in available forage
3 quality on a region basis as well.

4 The definition of "growing season" would
5 also have to be revised to consider all dormancy periods
6 such as those occurring in the summer, the lag time for
7 early spring growth and the effect of drought.

8 Our national standards should maximize
9 grazing through good range and pasture management to a
10 suitable area. USDA should not impose rules on Texas,
11 Colorado and New Mexico that are designed for Vermont,
12 New York and New Hampshire.

13 The National Organic Standard Board 2005
14 recommendation on access to pasture included an
15 exception for pasture requirement for finishing beef up
16 to 120 days. It's my understanding that this exception
17 is not included in the proposed rule primarily due to
18 comments received that stress the importance of the
19 pasture requirement for dairy animals; however, the vast
20 majority of those comments did not address beef
21 production.

22 The proposed rule prohibits feedlots and
23 dry lots. This is not in line with the NOSB
24 recommendation that the confinement of cattle for
25 finishing should be allowed. The prohibition, along

1 with the new definition for feedlot or dry lot result in
2 unintended consequences. Barnyards and alleyways where
3 cows wait before entering the milking barn should not be
4 prohibited areas for these animals.

5 Incredibly, under the proposed definition
6 of "feedlot, a confined area for controlled feeding of
7 ruminants," thought occurs to me that an organic pasture
8 could certainly be considered a feedlot. It's a
9 confined area with a fence around it. And in accordance
10 with these very restrictive pasture rules, it's
11 certainly carefully managed to provide feed to
12 ruminants. Surely it's not the intent of the proposed
13 rule to prohibit pasture.

14 Beef producers may choose to finish their
15 cattle on pasture and serve those consumers who prefer
16 the characteristics of grass-finished beef. Both
17 finishing methods can be done in accordance with organic
18 standards and both can produce a highly -- a
19 high-quality organic product that is in high demand.

20 The exception allowing the confinement of
21 cattle for finishing should be included in the rule as
22 recommended by the National Organic Standards Board.

23 Also the exception that allows the
24 confinement of non-ruminant animals and goats because of
25 inclement weather should apply to any animal. It would

1 be unacceptable and cruel to prohibit producers from
2 protecting their animals from harm.

3 Many parts of the proposed rule are very --
4 are overly prescriptive and unnecessary. Please
5 eliminate proposed requirements for sacrificial pasture
6 and for fencing off streams and other bodies of water.

7 I suspect the purpose of these new
8 provisions is to protect soil and water quality which is
9 already regulated in the existing rules. Further, the
10 Natural Resources Conservation Service has developed
11 best management practices that are tailored to each
12 region of the country that would be more appropriate.

13 The existing rules also already prohibit
14 feeding manure to organic animals and the proposal adds
15 that clean water must be provided. The provisions
16 should be sufficient -- these provisions should be
17 sufficient without overly prescriptive specification of
18 types of equipment to be used in weekly cleaning
19 schedules.

20 Almost done.

21 Similarly, the addition of the pasture
22 practice standards are unnecessary. All of these
23 provisions, with the exception of the sacrificial
24 pasture requirement which we've already recommended
25 removing, are required in other sections of the existing

1 rules.

2 How do you envision this affecting native
3 grassland? Many organic producers utilize native
4 rangeland, and I hate for a strangling rule to have the
5 unintended consequence of discouraging this.

6 In closing, the National Organic Standards
7 Program is a marketing program whose purpose, I believe,
8 is to support the continued growth of the organic
9 industry and to enable producers to supply, more
10 importantly, the increasing consumer demand for organic
11 products.

12 It does not serve that goal to establish
13 overly-prescriptive regulations that put existing
14 organic operations out of business and discourage others
15 from transition to organic production.

16 We must have strong, enforceable standards
17 to preserve consumer confidence and those standards do
18 not need to be so stringent that they strangle the
19 growth of the organic sector and drive up consumer price
20 for this important product.

21 Sorry to be so long, but I had to get it
22 all in there.

23 MR. MATHEWS: That's okay. No problem.

24 MR. DeBERRY: No response?

25 MR. MATHEWS: You didn't ask a question,

1 Drew.

2 Yes, sir?

3 MR. POWERS: Thank you. My name is Trey
4 Powers. I'm with the Texas Comptroller of Public
5 Accounts and what I have is a letter from the
6 comptroller to you that I will submit, also, but I would
7 like to read into the record if I could.

8 "Dear Mr. Mathews. As a rancher, former
9 Texas Commissioner of Agriculture and now Comptroller of
10 Public Accounts for the State of Texas, I have a keen
11 interest in our state's agricultural industry, the
12 second largest industry in the state. Agriculture has a
13 \$100 billion economic impact on our economy and employs
14 one out of seven working Texans.

15 "Thank you for holding the listening
16 session here in Texas and providing an opportunity to
17 comment on the NOP's proposed rules relating to
18 certified organic livestock operations. Formal written
19 comments from the Comptroller's office will be provided
20 to you prior to the December 23rd comment deadline. At
21 that time, my office will have completed a full economic
22 impact analysis of the proposed rule on affected parties
23 in Texas.

24 "The very premise behind the proposed
25 regulation is flawed in that it addresses production

1 practices that truly have nothing to do with whether
2 meat or dairy product is organic. While some consumers
3 might believe organic means free-ranging animals, there
4 really is no scientific study to show a difference in
5 product from free-ranging, grass-fed organic animals and
6 organic animals with perhaps less access to pasture.
7 Producing and supplying a product to meet the wishes of
8 animal-welfare minded consumers should be a production
9 and marketing choice left up to the producer.

10 "At this time, I wish to address a few
11 issues of greatest concern to the livestock and dairy
12 industries and convey the negative economic consequences
13 this rule would cause to producers and consumers in
14 Texas. Remarks for Texas would be equal -- equally
15 applicable to New Mexico, Colorado, Oklahoma, Arizona
16 and much of the western United States.

17 "First, on the pasture requirements, the
18 provision requiring 30 percent intake from standing
19 forage during the growing season is irrational in Texas.
20 For a 300-cow dairy in West Texas, some 1,800 acres
21 would have to be available for grazing. This provision
22 makes no sense for dairies in arid regions of the
23 country as there is no exception for times of drought.
24 In Texas, the cost to acquire the amount of land needed
25 to comply with the proposed pasture regulations would

1 decimate organic milk production here.

2 "Sacrificial pasture; this provision would
3 require even more land needed to run an organic
4 livestock operation which is infeasible in Texas.
5 Further regulations to protect soil resources in times
6 of wet weather should not be under the purview of an
7 organic program. There is no scientific or public
8 policy justification to support more stringent soil
9 management regulations on organic land than on any other
10 land.

11 "Regarding fencing, according to USGS and
12 the Texas Water Development Board data, there are over
13 368,000 miles of river, stream, lake and pond shorelines
14 in Texas with fencing costs now running over \$15,000 per
15 mile for a five-string, barbed wire fence.
16 Additionally, with a 100-foot buffer to protect from
17 manure runoff, literally hundreds of thousands of acres
18 of land would be unusable for production.

19 "While organic farms and ranches are only a
20 small fraction of the land in Texas, this regulation
21 would literally kill off what organic production we do
22 have and make certain no new organic operations would
23 locate here. The cost of fencing and acquisition of
24 other livestock watering sources are simply
25 uneconomical. Further, some areas of the state do not

1 have available groundwater, leaving producers to rely
2 solely on surface water which the proposed regulations
3 would render off limits. Cost to obtain groundwater,
4 where available, runs perhaps \$5,000 to \$10,000 per well
5 for drilling, casing, and a pump or windmill. This does
6 not include the additional cost of delivery and storage.

7 "As with soil protection, there is
8 absolutely no scientific basis or rationale for singling
9 out organic production and regulating water quality
10 which is the purview of the EPA, or in some cases
11 delegated to a state's water quality agency."

12 Regarding dry lot prohibition, "Dry lot
13 feeding really has nothing to do with the 'organicness'
14 of a product. Organic should be about what the animal
15 has ingested: feed, hormones, antibiotics, etc; and not
16 the lifestyle of the animal. There are marketing
17 programs for grass-fed beef already. The rule would
18 basically require that all organic beef cows be grass
19 fed. The prohibition of 120-day dry lot finishing for
20 beef cattle appears to have been written by grass-fed
21 interests and has no scientific basis.

22 "For these reasons and others that will be
23 outlined in our official written comments, the proposed
24 rules will decimate organic livestock production in
25 Texas. Further, with a lack of Texas-produced organic

1 meat and dairy, our consumers will be hit in the
2 pocketbook when purchasing these products, if they are
3 even available.

4 "I ask that you go back to the drawing
5 board on these rules, with significant input --
6 stakeholder input from organic producers. And again,
7 sincerely thank you for coming to Texas to hear our
8 thoughts."

9 Thanks.

10 MR. MATHEWS: Thank you. I look forward
11 to -- yeah, I look forward to getting the economic
12 impact.

13 MR. POWERS: Great. Thanks.

14 MR. MATHEWS: And, Drew, I guess I could
15 address one of the issues in your comments. The idea
16 that pasture is a confined feeding area, never really
17 thought of it that way. Kind of sounds like something a
18 lawyer would say.

19 MR. DeBERRY: What an insult.

20 MR. MATHEWS: Didn't mean to be insulting.
21 I just couldn't resist.

22 MR. DeBERRY: That's okay.

23 MR. MATHEWS: Next?

24 UNIDENTIFIED SPEAKER: Can I borrow your
25 podium?

1 MR. MATHEWS: Sure.

2 UNIDENTIFIED SPEAKER: Thanks, Mr. Mathews,
3 for the opportunity, and my comments are on behalf of
4 Select Milk Producers. Some of my comments may seem
5 pointed, but my only intent is to be concise and brief.
6 I understand that the entirety of my written comments
7 will be submitted later on, so I'm going to focus just
8 primarily on the dry matter demand concept that's in the
9 proposal.

10 The requirement proposed that no more than
11 70 percent of the animal's dry matter demand come from
12 feed or non-pasture has several mostly negative
13 implications. As written, the Organic Standards Board
14 Proposal could unintentionally result in the
15 malnourishment of NOP cows -- that's Natural Organic
16 Program cows -- by forcing the use of inadequate fed
17 nutrient levels and in use of inadequate dry matter
18 demand values.

19 "Dry matter demand", as defined in this
20 proposal, is not equal to the dry matter requirement of
21 the animal. Also, dry matter demand is not equal to the
22 nutrient requirements of the animal.

23 The Organic Standards Board's proposed dry
24 matter demand defined as three percent of an animal's
25 live body weight grossly oversimplifies dry matter

1 intake requirements of dairy cows and would greatly
2 increase the risk of malnourishing the milk cows.

3 Estimating dry matter intake simply as a
4 fixed percentage of the live body weight, as proposed by
5 the board, serves to grossly underestimate the nutrient
6 intake required by cows at different stages of
7 production.

8 Energy intake regulation theory suggests
9 cows must be allowed to consume higher levels of energy
10 as their production levels increase. Limiting energy
11 and/or dry matter intake would cause cows to become
12 emaciated and potentially unhealthy.

13 Research reviewed by the Natural Research
14 Council relied on empirical evidence, published over
15 many years, involved thousands of lactating cows,
16 generated tens of thousands of data points and provided
17 the conceptual framework of energy-intake regulation
18 theory. The long publication history showed cows
19 consumed feed to meet the energy demands, meaning dry
20 matter intake is driven by milk production.

21 The dry matter demand values proposed by
22 the board caps dry matter intake for a 1,550 pound cow,
23 for example, at 46 1/2 pounds. The lactating cows
24 producing in excess of 50 pounds of milk would begin
25 losing body weight compared with cows consuming the

1 required dry matter intake level suggested or estimated
2 by the NRC at 47.7 pounds.

3 As cows reach higher production levels, the
4 gap between required and board-imposed dry matter intake
5 widens to a huge margin. The gap grows even more when
6 imposing the rule that fed levels of dry matter must not
7 exceed 70 percent of the dry matter demand value.

8 Further, cows producing just 75 pounds of
9 milk would lose an estimated two pounds of body weight
10 per day which corresponds to a loss of around one body
11 condition score about every 87 days. It's generally
12 considered unhealthy for cows to lose more than one body
13 condition score for the entire 300 to 400-day lactation
14 cycle.

15 Here again, imposing a 70-percent fed
16 ration rule would only hasten the loss of body weight
17 and condition of the NOP cows. The board's proposed
18 rule using dry matter demand to cap dry matter intake
19 and limit fed ration intake to 70 percent of dry matter
20 demand should be rejected.

21 "Dry matter demand", as defined by the
22 board, grossly underestimates dry matter intake required
23 by cows particularly in early and mid-lactation. The
24 use of dry matter demand seems to be a concept unique to
25 the board, does not appear to be supported by the 23

1 years of research summarized by the NRC in 1978 through
2 2001, is disconnected from actual nutritional
3 requirements of the cow, and if imposed, may majorly
4 affect the health and wellbeing of National Organic
5 Program cows.

6 Similarly, the fed ration rule that limits
7 the intake to 70 percent of dry matter demand serves to
8 widen the gap from imposed dry matter intake levels and
9 the actual dry matter intake levels required by
10 lactating NOP cows.

11 Both rules proposed by the board may
12 jeopardize the health and wellbeing of NOP cows by
13 imposing excessive restrictions on the nutrient intake.

14 Thank you.

15 MR. MATHEWS: Let me -- clarify something
16 for me. Are you saying that you would remove the
17 70 percent or you would remove the 70 and the 30?

18 UNIDENTIFIED SPEAKER: I'm suggesting to
19 reject the whole concept of dry matter demand value, so
20 that -- that tends to set this arbitrary limit on what a
21 cow is capable of eating and then take 30 percent back
22 from that.

23 Set it at 100 and then take 30 percent off,
24 then okay, I wouldn't have an issue.

25 But that seems to be a little bit of a low

1 number.

2 MR. MATHEWS: Thank you. Thank you.

3 Next?

4 MR. SKAGGS: Good afternoon. My name is
5 Jason Skaggs. I'm here to represent the Texas and
6 Southwestern Cattle Raisers Associations. TSCRA is a
7 131 year old association that represents over 15,000
8 members who manage approximately 4,000,000 head of
9 cattle on approximately 51,500,000 acres of range and
10 pastureland primarily in Texas and Oklahoma.

11 We appreciate USDA taking the time to come
12 to Texas to hear our comments on the proposed revisions
13 to the National Organic Program livestock standards to
14 clarify the role that pasture plays in the production of
15 organic ruminants.

16 TSCRA has members that voluntarily
17 participate in the NOP. These producers have invested
18 many resources in this marketing program, and like many
19 others, want to ensure that the success and credibility
20 of the program continues. However, TSCRA feels that the
21 proposed rule reaches too far, is too prescriptive and
22 may have many negative consequences.

23 The first concern to TSCRA is the proposed
24 requirements for sacrificial pasture and for fencing off
25 of streams and other bodies of water. The protection of

1 soil and water is already required in existing rules.
2 The Environmental Protection Agency and the Natural
3 Resource -- Natural Resource Conservation Service are
4 already attempting to address this issue through other
5 avenues, so please eliminate this provision from the
6 rule.

7 With that, proposed Section 205.239(d)(5)
8 specifies that feeding and watering equipment be
9 designed to be constructed and placed to protect from
10 fouling and must be cleaned weekly.

11 How does USDA envision this working for a
12 beef cattle operation that provides grazing over several
13 thousand acres?

14 How would USDA -- or how would a producer
15 make water available to -- for their animals but exclude
16 wild birds to prevent foul?

17 If you need to provide hay to the animals
18 in a dry spell, is a producer not allowed to place that
19 bale of hay on the ground?

20 Another issue that's of concern to TSCRA
21 with the proposed rule is the determination of dry
22 matter intake. The proposed DMI provisions do not take
23 into account the many variables of raising an animal in
24 different regions of the U.S. and introduces several new
25 burdensome recordkeeping requirements, as we've heard

1 from various speakers. TSCRA would like to see the DMI
2 provisions eliminated in the proposed rule.

3 Finally, the proposed rule prohibits feed
4 lots and dry lots and we get the impression that the
5 intention is to prohibit the use of pasture through the
6 use of several new definitions.

7 In the proposed new definition of "feedlot"
8 as a "confined area for the controlled feeding of
9 ruminants", an organic pasture could be considered a
10 feedlot, as Drew mentioned earlier. TSCRA urges you to
11 address this issue by eliminating this provision, as
12 well.

13 The NOP is an important, voluntary
14 marketing tool for TSCRA members. We feel like this
15 program works well and is very informative to those that
16 participate in understanding the rules. We urge you to
17 make the referenced changes to this proposal so that
18 Texas beef producers can continue to take advantage of
19 it without additional restrictions.

20 We will be having formal comments that we
21 will be submitting before the December deadline.

22 Thank you.

23 MR. MATHEWS: Thank you.

24 Does Texas have a system for having a --
25 are the farmers and ranchers required to put together a

1 plan for how they protect the water sources on their
2 farms and ranches?

3 UNIDENTIFIED SPEAKER: Yes.

4 MR. MATHEWS: Okay. I heard a reply "yes"
5 and that comes out of TDA?

6 UNIDENTIFIED SPEAKER: That's the short
7 answer.

8 MR. MATHEWS: Okay.

9 UNIDENTIFIED SPEAKER: There's a longer
10 answer, but that's the short answer.

11 If it's a (unintelligible) or a member of
12 the Texas State Soil and Water Conservation Board or
13 falls under the --

14 MR. MATHEWS: Why don't you come on up.
15 She can't --

16 UNIDENTIFIED SPEAKER: I'll -- I'll whisper
17 in your ear later.

18 MR. MATHEWS: Or you could write it down
19 and send it to me. But bottom line is, yes, they do
20 have a system that is -- that TDA runs?

21 UNIDENTIFIED SPEAKER: I think they're
22 taking on more, quote, "water conservation --"
23 (unintelligible) -- by trying to prescribe that into it
24 in here.

25 MR. MATHEWS: Okay. So we're taking on

1 more than we need to because the State already addresses
2 it for all the farms?

3 UNIDENTIFIED SPEAKER: Yes.

4 MR. MATHEWS: That's the message I'm
5 receiving.

6 Okay. I see a gentleman with his hand up.

7 MR. BOEHNING: Also --

8 MR. MATHEWS: Can you come up and speak
9 into the microphone for the record, please?

10 MR. BOEHNING: Okay.

11 MR. MATHEWS: I assume you're commenting on
12 the water issue?

13 MR. BOEHNING: Yeah.

14 MR. MATHEWS: Okay.

15 MR. BOEHNING: And I'm going to have some
16 other comments.

17 MR. MATHEWS: Okay. Well, I was just going
18 to say when you get done with comments on the water,
19 we'll just move right on into whatever else you have to
20 say.

21 MR. BOEHNING: All right. In Texas, we've
22 got TDA, you know, looking at our overall plan to ensure
23 soil and water quality. But on top of that, we've
24 also -- we have the NRCS that regulates all of our
25 farmland, you know, to protect it from soil erosion and

1 everything. And on most of the dairy farms, on top of
2 that, we -- we've even got TCEQ which, you know,
3 regulates all our runoff water and environmental issues.

4 MR. MATHEWS: TCEQ is?

5 MR. BOEHRNING: Texas Commission on
6 Environmental Quality.

7 So the way I see it, we've got at least
8 four -- three or four agencies already regulating our
9 soil and water quality which -- so I think, you know,
10 anymore would just be kind of overshooting it.

11 And that kind of brings me into the issue
12 of the sacrificial pasture. A lot of the definition of
13 the sacrificial pasture kind of describes a dry lot. I
14 mean, it drains well, it doesn't run off any water
15 into -- onto any other land or contaminate any other
16 land, and it contains all of that water.

17 So I feel like if -- if the cows and -- and
18 in Texas, we already are mandated to supply pasture to
19 the dairies for a minimum of 120 days a year during
20 growing season. So I feel like if a cow is not out on
21 pasture, it's in her best interest and the environment's
22 best interest to be in a dry lot which is designed to
23 protect her, first of all, because it drains well and
24 there's not mud holes and, you know, places for runoff
25 to -- to puddle and that kind of thing.

1 And, you know, it's a good place to have a
2 central location for, you know, your wind breaks to
3 protect cows in our kind of weather, which is -- if --
4 if you were to prohibit our dry lots and we had to send
5 our cows out to sacrificial pasture -- like in our
6 region, I mean, one day may be decent weather, but then
7 the next day we may have a blowing snowstorm.

8 And we need a central location to have wind
9 breaks and be able to feed the cows on concrete rather
10 than, you know, running feed mixers through the mud and
11 that kind of thing.

12 So I'm not against supplying pasture, but
13 we need an alternative. When we can't get them to the
14 pastures, it's going to be detrimental to their health
15 to be, you know, walking them a half a mile down a muddy
16 lane and burning off all their energy when it just
17 wouldn't be necessary.

18 And if you hadn't noticed, I'm a dairy
19 producer. I have a dairy about -- about 100 miles from
20 here at Muleshoe.

21 MR. MATHEWS: Could you give us your name?

22 MR. BOEHNING: Brian Boehning.

23 And so I'm against a lot of the proposed
24 rule changes. And on the 30 percent dry matter, like
25 some of the other guys have said, I just feel like

1 requiring the 30 percent dry matter, that the 30 percent
2 is going to be a little bit too much, as far as to
3 require it, just because pasture conditions and our
4 weather here in Texas, we don't always -- we probably
5 wouldn't always be able to provide that, so -- which
6 kind of brings me to -- but you can tell I'm not near as
7 prepared as a lot of the other people.

8 But -- but on the sacrificial pastures,
9 back to that, I think that would be the worst thing for
10 soil conditions myself. I mean, you just block off a
11 piece of land and stomp it into the ground because you
12 can't use your original pasture because it's too wet,
13 well, that's just -- don't make a whole lot of sense.

14 And I feel like -- everything I read about
15 the -- you know, where USDA is headed and anything to do
16 with the Farm Bill, and especially our new
17 administration, that they're really trying to encourage
18 new organic production and get new farmers to transition
19 into organics, and I feel like this would just be the
20 opposite of the direction that, you know, even the
21 administration and USDA, from what I hear, is trying to
22 go.

23 And in the dairy industry, just in the last
24 four years, maybe three to four years, do you see
25 organic milk in the dairy case right next to ordinary,

1 conventional milk, and so we're just now barely getting
2 to the point where the general consumer can make a
3 choice between organic and non-organic, and so I'd hate
4 to see some of these rules that would really cripple the
5 industry back to where it was at the start of organics
6 where the only way to get an organic product is go to a
7 health food store and pay \$8.00 or \$9.00 for a pint of
8 milk or something because we've -- we've come a long
9 ways, and from everything, you know, that I see, it
10 would be a shame to -- to go back the other direction.

11 And thanks for coming here and listening to
12 our comments.

13 MR. MATHEWS: Okay. So I think that
14 your -- you also would say that the rules already talk
15 enough about you have to protect your soil and water and
16 so the fencing-off provision is not needed. I take that
17 from yours.

18 Okay. Next?

19 MR. KIZZIAR: Thank you, Mr. Mathews, for
20 coming to Amarillo and listening to our suggestions and
21 comments. My name is Bo Kizziar. I manage a feed yard
22 up in the northern Panhandle, have for 30 years. I'm
23 also representing Texas Cattle Feeders Association.
24 TCFA is a trade association that represents cattle
25 feeders in Texas, Oklahoma and New Mexico; and TCFA feed

1 yards market approximately seven million head of cattle
2 every year accounting for about 30 percent of the
3 nation's fed-beef supply.

4 TCFA feed yards participate in numerous
5 voluntary marketing programs to add value to their
6 cattle and satisfy consumer wants, but this proposed
7 rule would change current standards and prohibit me or
8 other feed yards from participating in the organic
9 program. This is not in line with the National Organic
10 Standards Board's recommendation that confinement of
11 cattle for finishing should be allowed.

12 The NOSB recommendation on access to
13 pasture on March 18, 2005, included an exception to the
14 pasture requirement for finishing beef up to 120 days;
15 however this proposed rule prohibits confinement. It's
16 my understanding that the confinement for finishing
17 exception is not included in this proposed rule
18 primarily due to the large number of comments received
19 on the advance notice of proposed rulemaking that
20 stressed the importance of pasture requirement for dairy
21 animals and not -- and not beef cattle.

22 Pasture access can be, should be and is
23 currently a standard for organic livestock production,
24 but I do not believe that the methodology outlined in
25 the proposed rule is the -- is the best approach.

1 In Texas, pasture access is already
2 required and procedures are in place to ensure animals
3 have access to pasture. By prohibiting confined
4 finishing, this proposed rule is discriminatory and
5 conveys a negative connotation on feed yards. Beef
6 producers should have the opportunity to choose to
7 finish their cattle on pasture and serve those consumers
8 who prefer the characteristics of grass-finished organic
9 beef or on organic feedstuffs in a feed yard and serve
10 those consumers that prefer the characteristics of
11 grain-finished organic beef.

12 Both finishing methods can be done in
13 accordance with the organic standards and both can
14 produce a high-quality organic product that is in high
15 demand. The exception allowing the confinement of
16 cattle for finishing should be included in the rule
17 revision as recommended by the NOSB.

18 Mr. Mathews, thanks again for coming to
19 Amarillo to listen to our concerns and TCFA will be
20 filing written -- written comments.

21 MR. MATHEWS: Okay. Let me follow up a
22 little bit with you. There were comments on the beef
23 animals, as well as the dairy animals, so there was a
24 significant number of comments that dealt with beef.
25 Most of those talked in terms of a 90-day finishing

1 period rather than the board's 120 proposal. I know we
2 went with the commenters that were opposed to it
3 altogether and said no.

4 What would you say to the commenters before
5 that were calling for 90 days, which is also a thing
6 that I've heard in other locations? Can it be done in
7 90 days versus 120?

8 MR. COLEMAN: No, no. No, it
9 can't.

10 MR. KIZZIAR: No, you can't get the quality
11 characteristics of fed beef conveyed to that -- that
12 piece of meat in 90 days. You need that -- you need it
13 to go into the full 120-day feed period. And
14 depending --

15 MR. COLEMAN: Hundred and twenty day
16 minimum.

17 MR. KIZZIAR: Right. Yeah. And I was
18 going to say: Depending on the in-weight of the animal
19 and the age of the animal at the time that they go on
20 feed, to try to do that in 120 days is pushing it a
21 little bit, too.

22 MR. MATHEWS: Okay. I guess I would follow
23 up again though.

24 Wait a minute. You may want to respond to
25 my question.

1 The -- the fact that the animals are raised
2 here on the range and would be eating a lot of dry grass
3 versus the luscious, green grass that you might find in
4 the north, would that have an impact on how long it
5 takes for the finished feeding?

6 Is it -- is there something unique to being
7 on the range versus being on lush, green grass that
8 would cause that change from the people that are telling
9 me 90 days yet you're telling me 120?

10 MR. KIZZIAR: Well, again, I think it has
11 to do with the age of the animal and when they go on
12 feed. To get a -- a preferred carcass, you know, is
13 going to require so many pounds, you know, to be added
14 to that -- to that animal and that's -- it's just going
15 to vary.

16 Again, I think -- I think 120 days is
17 minimal to change those fat characteristics, you know,
18 to -- to bring the -- you know, the qualities of taste
19 and tenderness and the things that we feel like fed beef
20 brings to the market along with the organic things. You
21 know, we're -- we're not talking -- we're not talking
22 those.

23 But we would like -- you know, we're
24 constantly looking for ways to -- to keep feed yards
25 full, and that's my job and that's my purpose. And

1 by -- by being restricted or limited on the types of
2 feeding endeavors that I can -- I can go into, then
3 that's -- you know, that -- that prevents me from --
4 from doing that. It hinders my ability to -- to profit
5 in -- in the industry in these varying value-added type
6 situations that we're trying to do. You know, we
7 want -- we want, as an industry, to provide good-quality
8 eating experiences for our consumers. And if they
9 choose organic, we want to be able to provide that,
10 also.

11 MR. MATHEWS: You've put your hand up a few
12 times.

13 MR. YALE: I'm patient.

14 MR. MATHEWS: I'm glad.

15 MR. YALE: My name is Benjamin Yale and I
16 serve as general counsel for Select Milk Producers, Inc.
17 Select is a milk-marketing cooperative with members
18 located in West Texas, New Mexico, Oklahoma and Kansas.
19 It markets organic milk, and some of its members in
20 Texas and New Mexico assist in the acquisition of
21 organic milk for its customers primarily here in Texas.

22 I also serve as general counsel for
23 Continental Dairy Products, Inc. It, too, is a
24 milk-marketing cooperative located in the Mideast, Ohio,
25 Michigan and Indiana, and it also has members who market

1 organic milk to buyers primarily there in Ohio and
2 Indiana, and also sometimes coordinating with milk into
3 the Southeast.

4 Select and Continental are proud of the
5 quality organic milk that's been produced in its'
6 customers' process. They support national standards for
7 organic production of milk, milk meeting the current
8 organic standards and assist in the development of a
9 market for those discerning customers who are concerned
10 about what is in their milk other than what Mother
11 Nature would otherwise provide.

12 Specifically these customers or consumers
13 have expressed concern regarding the use of antibiotics
14 in feed and therapy, the use of artificial growth
15 hormones to stimulate milk production, the use of
16 synthetic chemicals in the feed, the presence of
17 pesticides, herbicides and insecticides within the feed
18 and other similar concerns.

19 The standards have given assurances to
20 consumers that products certified by USDA as organic do
21 not contain those products. Faster than supply, the
22 demand for this particular kind of milk has grown.
23 There is an ever-growing market for products that can
24 certifiably make these claims.

25 The proposed rule threatens that supply by

1 imposing regulations regarding not the content of the
2 milk, but animal husbandry and other herd and soil
3 practices that have no direct or scientific correlation
4 to the producing -- or production of organic milk.

5 Currently 40 percent of the milk certified
6 as organic produced in the United States comes from the
7 state of Texas. Imposition of the proposed rule will
8 bring an end to 40 percent of the milk produced
9 organically in the United States.

10 Although it supports pasturing of cattle
11 whose milk and meat is marketed as organic, it does not
12 support the proposed rule. It does not just -- it's not
13 just that it imposes improper and even dangerous
14 standards, but because any such rule, no matter how well
15 it's written or designed regarding pasturing, is beyond
16 the power and authority of the Organic Products Act of
17 1999. And Select and Continental oppose the
18 implementation of any rule that is beyond legal
19 authority.

20 In fact, we would argue that the difficulty
21 which you are experiencing today and you have throughout
22 the listening sessions in arriving at a regulation is
23 because the USDA has no authority, and more importantly,
24 Congress has provided no standards with which to judge
25 such regulations.

1 We also oppose individual aspects of the
2 proposed rule. Other speakers have addressed those and
3 will continue to address the technical aspects of the
4 rules as regards soil and animal husbandry.

5 The issue comes down to not what is organic
6 or organically produced, but who has the authority to
7 make that definition. Knowing who decides what it means
8 is really the key to the question. It is a term that
9 has different meanings to different people.

10 For most it means, as we have said earlier,
11 that there are no synthetic chemicals or antibiotic
12 residue in the milk or the livestock as a result of
13 practices. Others argue that it's more than content,
14 but includes practices, meaning traditional farming, for
15 example.

16 Some suggest that organic food is raw and
17 unprocessed foods, and in the case of milk, includes
18 unpasteurized milk. Some argue organics should mean
19 sustainability. Others see organic as a small farm
20 niche that should be unavailable to the larger farms
21 under any conditions. Some see it as free range. And
22 some of us see organic as the equivalent of the local
23 farmer.

24 But for purposes of rule making, the only
25 place to look is the law that authorized the organic

1 standards in the first place. The rule is subject to
2 the Organic Products Act of 1999. And if anything,
3 Harvey -- the two Harvey cases, Harvey-1 and Harvey-2
4 tell us that the power of the secretary is limited to
5 what the statute says and the secretary cannot expand
6 his authority beyond it, period.

7 As the first case to consider the Organic
8 Act, the Harvey case is instructive. The First Circuit
9 described the underlying premise of the Act, quote, "As
10 a general matter, an agricultural product must be
11 produced and handled without the use of synthetic
12 substances in order to be labeled or sold as organic."

13 The Act not only defines what is
14 organically produced, but it specifically limits the
15 secretary. It expressly states that, "The production or
16 handling practice is not prohibited or otherwise
17 restricted under this chapter. Such practice shall be
18 permitted unless it is determined that such practice
19 would be inconsistent with the applicable organic
20 certification program."

21 Therein lies the issue, what is within the
22 applicable organic certification program? But that is
23 for the Congress, not the secretary, not the National
24 Organic Standards Board, consumers or even the
25 individuals speaking here today to decide. It was the

1 absence of the clarity of what "organic" meant that
2 caused Congress to start the National Organic
3 Certification Program. It found it necessary to
4 establish national standards and assure consumers of a
5 consistent compliance with those standards.

6 To that end, Congress defined "organically
7 produced" as an agricultural product that is produced
8 and handled in accordance with the chapter.

9 Now, in typical Congress speak, that means
10 we have to read elsewhere to find out what they meant.
11 But in light of the provisions that does not permit the
12 imposition of higher standards, is the Act is devoid of
13 any mentioning of pasturing, soil, processes or animal
14 husbandry. It provides no recognition of other organic
15 elements that some people would argue such as
16 traditional, free range, small farm, sustainability,
17 local or raw or unprocessed.

18 To be labeled "organically produced",
19 Congress said, "Livestock products shall be produced and
20 handled without the use of unapproved synthetic
21 chemicals and produced and handled in accordance with an
22 organic plan that is produced -- approved by the
23 producer and the certifying agent." There is no
24 restriction on how the cattle are to be handled or
25 managed.

1 Congress also goes on to create a national
2 list of prohibited chemicals while there is no provision
3 for prohibited practices or methods. Congress created
4 the National Organic Standards Board and authorized it
5 to advise the secretary as to substances from the
6 national list, provide technical advisory panels for
7 consideration of substances on the national list, review
8 of botanical pesticides listed on the list, listing of
9 products of contamination and exemptions from
10 restrictions on spraying.

11 It provides no authority to NOSB to advise
12 on methods of producing milk or animal husbandry. The
13 one express exception is as regards medical treatment.
14 Congressmen mandated that NOSB recommend standards to
15 the secretary in addition to the prohibition of some
16 therapeutic doses of antibiotics, synthetic internal
17 parasiticides, or administering medication other than
18 for illness, but the statute specifically limited those
19 standards. Those are in addition to those for the
20 medical care of the livestock.

21 And by the way, we will be filing written
22 comments and we'll have the specific cites to those
23 statutes and regulations that we cite.

24 Since that paragraph has no particulars, no
25 standards can be recommended for the other provisions.

1 In addition, Congress directed the
2 secretary to perform a list of administrative
3 enforcement activities which the secretary can and must,
4 in some cases, employ to effectuate the Act. At the end
5 of that list, it does have what would appear to be "and
6 whatever else the secretary deems necessary under
7 Subsection 11."

8 But under the canons of statutory
9 construction, it is necessary to see that it's not as in
10 addition to administrative and enforcement activities
11 which would encompass things such as soil, animal
12 husbandry, feeding and other characteristics; rather, it
13 is whatever the secretary deems necessary in order to
14 administer the Act.

15 But none of these include regulations
16 regarding pasture or animal husbandry which the proposed
17 rule is all about. The rule itself and the explanations
18 and comments given by the secretary shows that it goes
19 beyond its authority.

20 For example, in the proposed rule, the
21 secretary says that, "As regards a fixed, standard
22 minimum days on pasture, we believe this is contrary to
23 the expectations of the organic community and
24 consumers."

25 Elsewhere the secretary says there is

1 nothing in the Act that provides for the secretary to
2 consider the expectations of the organic community and
3 consumers.

4 And later it says, "We agree with those
5 commenters --" the secretary says, "We agree with those
6 commenters who have targeted exemption from pasture for
7 finish feeding as contrary to expected intent of
8 pasture-raised animals and organic systems."

9 The organic community also includes those
10 organic dairy farms and livestock farms that are not in
11 compliance with this proposed rule, which includes
12 virtually everybody who is speaking today.

13 Much of the organic production of livestock
14 and milk is here today and is part of that community, so
15 who is this organic community? Who defines the
16 membership? Who is its voice? Who gives it the legal
17 authority to dictate what the policies are?

18 The Congress never yielded its authority
19 over to what -- whatever it constitutes organic as such
20 a nebulous and undefinable community.

21 The expectation of consumers are very
22 important to everyone who produces organic products.
23 They want to meet their needs and let the consumer
24 decide what they want. But the expectation of
25 consumers, beyond meeting standards, is not provided in

1 the Act. All that Congress requires is that there be a
2 standard on the presence of chemicals and it be
3 enforced.

4 Measuring consumer views as a criteria for
5 determining policy regarding what -- additional criteria
6 for organic is not consistent with that authority;
7 rather, consumers can express their views in the ballot
8 box and let the Congress make those decisions.

9 The secretary even acknowledged that the
10 expectations that it spoke of were found in
11 mass-produced ballots sent to the department, tens of
12 thousands. Those are not representative of the
13 consuming public by any scientific method.

14 In any event, none of them said they would
15 approve of a cow in a muddy pasture with mud up to her
16 hocks. None of them said they would approve of a cow in
17 a dried-out pasture in dormancy which had little
18 nutrient value and presented a wildfire hazard.

19 I think it would also be fair so say that
20 many of these would also expect them to have the milk
21 produced with a red barn, run by a man wearing overalls
22 and a plaid shirt. And some might even expect them to
23 see a young maiden on a three-legged stool on a
24 straw-strewn floor milking by hand.

25 Where do you draw the line on consumer

1 expectation and the reality necessary to produce a
2 high-quality, safe product that the consumers can depend
3 on? The answer is what Congress did, and they limited
4 it to the substances.

5 The proposed rule seeks to create and
6 define a term called "sacrificial pasture". It's been
7 detailed by some of the other people here today. The
8 term is explained as follows: "A sacrificial pasture is
9 intended to protect the other pastures from excessive
10 damage during periods when saturated soil conditions
11 render the pasture too wet for animals to graze."

12 But nowhere in the Act is the secretary
13 given the authority to adopt regulations that either
14 protect the soil or require its destruction, and the
15 sacrificial practice is really a requirement that it be
16 destroyed, both of which the proposed rule certainly is
17 intended to do.

18 Following the law is important. When we do
19 not follow the law, untoward things happen. We have no
20 guidance what to place in the rules. We risk creating a
21 regulation that is unenforceable as a matter of law. We
22 have no limits to what can be considered and reduce the
23 focus of what organic can be considered. Most
24 importantly for most of us it damages the brand of
25 organic.

1 For example, we can explain to consumers
2 that there is a value to know that there is a reduced
3 risk of chemical residue present in their milk or their
4 livestock. There's a scientific basis behind it. There
5 is no scientific basis that would suggest that a cow
6 that lives on pasture 120 days versus 119 days or 320
7 days versus 110 days provides any kind of scientific or
8 identifiable benefit.

9 When consumers begin to understand that,
10 they may question the viability of the standards that
11 are very important to this Act.

12 Select and Continental are not opposed to
13 consideration of the fact that there's many others that
14 subscribe to organics. In fact, in some cases we are
15 trying to meet those through our own independent means.
16 Rather, those considerations of those factors have to be
17 within the stricture of what the organic standards are,
18 not outside of that.

19 Without such authority, USDA needs to stay
20 out of where it has not been given the authority. Let
21 the makers of the products pronounce their local nature
22 or the fact that they pasture or their sustainable
23 practices. Let it be a marketing factor. Let states
24 exercise the statutory rights to impose higher
25 standards, standards that can more easily be addressed

1 statewide to the local climatic conditions as opposed to
2 defined nationally.

3 To do otherwise risks denying millions of
4 consumers the very products they demand, milk and meat
5 products that are produced without the induction of
6 synthetic chemicals, antibiotics, growth hormones or
7 other substances added to the food chain.

8 We therefore request that this particular
9 proceeding be terminated and not be taken any further.
10 And again, I want to thank you for giving us the
11 opportunity to speak and we will be presenting a written
12 testimony.

13 MR. MATHEWS: So I take it from your
14 comments that you want us to stop the rule making
15 altogether, is one?

16 MR. YALE: Yes.

17 MR. MATHEWS: And two, that you think that
18 we have no authority under the statute to go beyond the
19 regulation of materials?

20 MR. YALE: That is correct.

21 MR. MATHEWS: Okay. How would you explain
22 Section 6509(d), Standards, (2), "The National Organic
23 Standards Board shall recommend to the secretary
24 standards in addition to those in Paragraph 1 for the
25 care of livestock to ensure that such livestock is

1 organically produced"?

2 That sounds like animal husbandry.

3 MR. YALE: Yeah, Paragraph 1 deals with the
4 medical, therapeutic treatment issue. That's not
5 pasturing.

6 MR. MATHEWS: But isn't animal husbandry
7 pasturing?

8 MR. YALE: Animal husbandry and pasturing,
9 the point of it is, as I stated in my testimony, that
10 very narrow exception Congress carefully articulated
11 that it would only apply to -- it would only apply to
12 those cases in which was involved in the providing of
13 medical care, with the idea in mind there might be some
14 methods that were not otherwise prohibited or required
15 that could have an impact on the organic quality of the
16 product.

17 It does not address pasture. It does not
18 address soil. It does not address any of those
19 particular characteristics. It's very narrow.

20 MR. MATHEWS: Okay.

21 MR. YALE: Need anything else?

22 MR. MATHEWS: No.

23 MR. YALE: Thank you.

24 MR. MATHEW: I just -- I'm surprised by the
25 comment. That's all. I would have to say that I

1 strongly disagree.

2 MR. YALE: I would have thought you would.

3 MR. MATHEWS: Next? Anyone else? Sally.

4 MS. KEEFE: Hi. My name is Sally Keefe.

5 My company Aurora Organic Dairy has five organic dairy

6 farms and a dedicated organic milk-processing plant.

7 Our organic milk is sold to retailers across the country

8 for their store brand or private label organic milk

9 offerings.

10 Our milk processing plant is located in

11 Weld County, Colorado in the town of Platteville. We

12 have three dairy farms in Weld County, as well; one in

13 Dublin, Texas, in Erath County; and one in Sherman

14 County in the town of Stratford about 75 miles north of

15 here.

16 Our milking herds range in size from 650 to

17 4,500 cows. In total, we have a milking herd of about

18 12,000 cows. Between our farms, plant and support staff

19 we are a group of about 300 people dedicated to organic

20 dairy farming and processing. We support a network of

21 more than 120 family farmers, many in the regions where

22 our farms are located. They supply us with organic

23 feed, forages, hay, on-farm services, etc. Many of

24 these suppliers are small businesses who rely on the

25 organic livestock community for their sales.

1 At Aurora Organic Dairy we strongly support
2 greater clarity in the organic regulations for
3 livestock. We firmly believe that pasture and outdoor
4 aspects are critical aspects of the Organic System Plan
5 for all organic livestock producers.

6 During the grazing season, we graze our
7 cattle on more than 4,000 acres of certified organic
8 pasture that surrounds our five dairy farms. The
9 majority of our pasture is irrigated.

10 Additionally, our dairy cattle have open
11 and free access to the outdoors year round and have
12 well-designed and maintained facilities for both housing
13 and milking.

14 Animal health and welfare is the highest
15 priority for our operations. We work with
16 nutritionists. We have three large-animal veterinarians
17 on staff and we train our herdsman extensively on key
18 animal health criteria to ensure the best care for our
19 animals.

20 All five of our dairy farms have received
21 third-party animal welfare certifications from Validus
22 and all received an excellent rating.

23 As I mentioned at the start, at Aurora
24 Organic Dairy we commend the USDA for issuing the
25 proposed regulations and for working so hard to ensure

1 that there's greater clarity in the regulations for
2 organic livestock.

3 That said, we have some very specific
4 concerns about the proposed regulations and appreciate
5 the opportunity to share those with you today. We will
6 follow up in a written comment to USDA prior to the
7 close of the comment period.

8 First, we believe that year-round,
9 continuous management on pasture is impractical for the
10 vast majority of organic producers with ruminant
11 livestock, whether you have beef cattle, dairy cattle,
12 lambs, goats, alpacas, what have you, and this is
13 irregardless of herd size or geographic region.

14 The proposal for continuous, year-round
15 management on pasture is not in the best interest of the
16 animals, the land or the water. It will expose the
17 animals to conditions that risk severe injury; increase
18 the incidence of illness, including, in our production
19 system, mastitis; and a whole host of other
20 animal-welfare disasters.

21 Additionally, the feed value of irrigated
22 pastures like ours outside the grazing season is
23 virtually nil. The pastures will be destroyed. If you
24 require us using them in the winter or during the rainy
25 parts of the year as sacrificial pastures, it will be

1 nearly impossible to restore them so that they can
2 provide any feed value in the future to the animals.

3 To avoid the severe animal welfare
4 implications and to ensure good environmental
5 stewardship that preserves and protects our land and
6 water resources, we suggest that the USDA adopt a
7 pasture standard for the grazing season, but include
8 provisions for access to the outdoors outside of the
9 grazing season.

10 Secondly, we are very concerned about the
11 proposed calculations regarding dry matter intake and
12 dry matter demand. A "one size fits all" approach to
13 ensuring a minimum DMI for all species and breeds
14 regardless of energy needs and stage of production is
15 not in the best interest of the animal.

16 Simply put, three percent of body weight
17 for determining dry matter demand vastly oversimplifies
18 the nutritional needs of ruminants and doesn't make
19 sense. Many of our cows need far more than three
20 percent of their body to maintain their body condition.
21 For dairy cows, whether you look at NRCS, National --
22 Natural Resource Conservation Service, National Research
23 Council or the Cornell Pennsylvania information, you
24 find that the dry matter requirements as a percent of
25 body weight vary widely and depending on a number of

1 different conditions.

2 We suggest that you remove any prescriptive
3 measurement calculations for DMI from the regulations.
4 Producers can specify this type of information in their
5 Organic System Plan for certifiable review, approval and
6 inspection in a manner that makes sense for their
7 operation, their species of animal, their location.

8 Third, we also believe that the regulations
9 should not contain prescriptive -- prescriptive
10 provisions as to what type of animal housing and feeding
11 areas can be used by organic producers. Animals need
12 housing in areas that can be maintained clean and dry to
13 prevent illness while protecting the animals during
14 inclement weather, be it hot and dry or cold and wet.

15 Decisions as to what form of housing is
16 best for any given location is a producer management
17 decision. Whether the facility for housing is a dry lot
18 with wind breaks and shade or a free-stall barn with an
19 exercise yard, it should make no difference.

20 And regarding access to pasture in a
21 nationwide program, we believe that the definitions and
22 prohibitions of dry lot and feedlot should be eliminated
23 before the proposed rule is finalized. Both pasture and
24 outdoor access requirements already ensure that organic
25 ruminants are not continuously confined.

1 Finally, there are a lot of prescriptive
2 measures in the proposed regulations that strip away
3 management flexibility and will reduce the ability of
4 producers to do what's best for their animals, their
5 crops and their farms. We believe that attempting to
6 enforce a "one size fits all" regulation for all organic
7 livestock producers that doesn't take into account
8 distinct differences in production systems and regional
9 variability doesn't make sense. The organic system
10 plans can and should define how a producer will comply
11 with the regulations, and along with well-trained
12 certifiers can assure that the best practices are
13 achieved no matter the location or the unique
14 idiosyncratic nature of each individual operation.

15 We urge the USDA to remove the prescriptive
16 elements of the proposed rule and instead focus on
17 ensuring that producers and certifiers are using the OSP
18 as Congress intended under OSPA.

19 We believe that the provisions in the
20 proposed rule that treat pasture as a crop in order to
21 make it a stronger link between the livestock section of
22 a producer's Organic System Plan and the crop section of
23 their Organic System Plan makes sense, but should not be
24 prescriptive. In other words, please treat everyone
25 consistently and please don't be prescriptive.

1 Thank you for the opportunity to comment.

2 MR. MATHEWS: Sally, you talked about the
3 30 percent in the feed ration. I know that Aurora has
4 some pretty detailed feed rations and they indicate dry
5 matter intake from each of the ingredients in the feed
6 ration.

7 Will your comments to us discuss how you
8 calculate how much dry matter your animals are getting?
9 Clearly, pasturing animals and your feed ration takes
10 into consideration the dry matter that they are
11 receiving, so will you be addressing that in your
12 comments?

13 MS. KEEFE: In our written comments, we
14 intend to address the dry matter intake and dry matter
15 demand calculations in two different ways, both through
16 our own experience at Aurora and dairy. As you noted,
17 we've met -- we've looked at this a number of different
18 ways, and frankly, we find great variability across
19 different rations and across our different operations.
20 It really isn't the same on all of our barns all of the
21 time. It varies a great deal.

22 Additionally, we intend to provide
23 information to the department from both the CPM, the
24 Cornell Pennsylvania Model; the NRC model; as well as
25 NRCS information about the variability of requirements.

1 MR. MATHEWS: Thank you.

2 Next? Come on down.

3 MR. REEB: I am Alfred Reeb and I'm with --
4 I represent the New Mexico Department of Agriculture.
5 I'm the division director of the dairy division. And I
6 have a director secretary -- after I've listened to all
7 the comments here -- that wanted me to keep it to a
8 single page so I do support everything else that was
9 said here this afternoon.

10 If I may use my glasses.

11 "Dear Chief Mathews. The New Mexico
12 Department of Agriculture, NMDA, wants to make a comment
13 to the proposed rule AMS-TM-06-0198, TM-05-14. The NMDA
14 is against a portion of the proposed rule as written.
15 The portion of the rule we do not accept is the
16 amendment to 205.239(a)(2). The statement that dry lots
17 and feedlots are prohibited is not acceptable to the --
18 to New Mexico as 100 percent of our dairy farms have dry
19 lots, we call them corrals, to feed their replacement
20 cattle and mature milking animals.

21 "Total mix rations, supplemental feeds,
22 concentrates and minerals are fed in the dry lots. The
23 dry lots have an average of between 600 to 900 square
24 feet per animal eliminating crowding of these animals.

25 "Metal catch cages are permanently

1 installed to catch the animals for veterinary checkups
2 and breeding. The grazing herds are not fed in their --
3 are not fed their concentrates, minerals, other ration
4 in the parlor. The time allowance in the parlor is too
5 limited to allow enough feed materials to be consumed.

6 "The average cow is milked within eight
7 minutes in the parlor, preventing relaxed feed
8 consumption. Stanchion barns do not exist in the state
9 of New Mexico.

10 "The amendment with the statement that dry
11 lots and feedlots are prohibited appears several times
12 within Document Nos. AMS 'dot, dot, dot.' They are on
13 Pages 63584 (twice in Column 3); 63593 (in Column 2 and
14 Column 3); 63594 (Column 2); and 63607 (Column 3).

15 "Currently, New Mexico has two organic
16 dairy farms and one other applying for organic status.
17 All three would lose their certification if this
18 statement to Amendment 205.239(a)(2) is accepted. The
19 NMDA opposes this statement as written. We recommend
20 removal of all these statements."

21 Thank you.

22 MR. MATHEWS: Okay. You currently have two
23 dairy producers and you are adding one more. Are they
24 grazing all life stages?

25 MR. REEB: As of this point, yes. Now, as

1 for the dry matter intake, it is not there. I'll -- I
2 will admit that. We're looking at anywhere between 800
3 to 1,200 per dairy farm and the acreage is not there.
4 They do have access to pasture as the old rule was
5 written and it is available. It is an irrigated pasture
6 with a pivot -- pivots, and it is used as much as
7 possible. But the organic feeds that are bought are
8 brought in and certified by the agents.

9 MR. MATHEWS: Thank you.

10 MR. REEB: Thank you very much.

11 MR. DEES: My name is Jack Dees. I'm
12 president of (unintelligible). We're out there in the
13 dry country. Our first certification, I think we had
14 155,000 acres under pasture.

15 I didn't have time to read everything that
16 you had in your deal here, but there's a few things that
17 popped out I'd like to share with y'all.

18 We formed an organic beef operation in --
19 well, we really started our organic protocol in '97.
20 And as soon as the USDA opened this thing up in October
21 of 2000 -- was it -- we were in place and had one.

22 There are several things that bother me
23 about this. I think we've taken our eye off the ball.
24 We're more interested, it seems like, in placating
25 people that don't know anything about rural living and

1 animals than the animals themselves.

2 In my opinion, we should address the
3 welfare of the animals and it's not necessarily that the
4 gate has to be opened. For example, I was -- one of our
5 producers was in North Dakota and I was filling out some
6 forms that Whole Foods required us to use every year
7 about this animal welfare thing. And one of their deals
8 was, you know, you couldn't confine them, and so forth
9 and so on.

10 So individually I polled all of our
11 producers, which was about 15 at the time, and they all
12 had different situations. This particular man said,
13 "Well, let me give you an example." He says, "I have a
14 barn out here and Saturday it's going to be 50 below
15 zero and that's before the chill factor. Now, you tell
16 me which is humane. Do I put those cattle in a barn or
17 do I kick them back out in the pasture?"

18 In our situation where we are, one of the
19 things that keeps popping in my mind -- and this is just
20 one of many -- is calving out heifers. We have cattle
21 scattered out everywhere. It takes 150 to 200 acres to
22 run a cow, and our terrain varies from sand dunes to
23 draws that are a mile wide and four or five and six
24 miles long that run like rivers a few days of the year
25 if we're lucky. There's places in there that you can't

1 take a horse because the brush is too thick, and we have
2 little rolling hills.

3 It would be impossible for me to gather up
4 heifers that are fixing to calf and put them in the lot
5 seven days prior to calving and kick them out seven days
6 after calving. We would have more horseback -- there's
7 not enough people in the county to gather these cattle
8 up.

9 And I'm not going to confine them too long.
10 It costs us \$3.00 or \$4.00 a head a day because we have
11 to buy our alfalfa or what-not to put them in there.
12 I'm not going to go in there and leave them for six
13 months just for the fun of it. So it's stupid. Okay?
14 It won't work.

15 Now we get into some other things. I would
16 like to address the feeding out of these cattle. When
17 we first got in it, we wanted to have a grass-fed
18 operation. At the time, I didn't even know you could
19 feed cattle out with grain organically. I hadn't met
20 Stiles yet.

21 And we looked at it and researched it quite
22 a bit and decided, well, in our country, we only get
23 rain, if we get it, about 60 days of the year. They
24 have to graze on pasture the rest of the time. We can't
25 afford to hang them. It's not available.

1 And our protein is range cubes or something
2 like that which we feed when it's dry. But again, we do
3 it based on what the animal needs. If it starts
4 raining, how in the world am I going to fence out every
5 dirt tank -- they call them ponds in other places --
6 where they can't water there?

7 When we have miles and miles of pipeline
8 and things like that, you know what, those buck deer
9 won't water at most water troughs. So we don't want to
10 fence them out of the tanks and hurt the livestock. We
11 have natural potholes -- and most of you guys are
12 grinning -- I know you do, too, in places where it
13 rains, you've got little places out there that nature
14 put for them to water. Are you going to fence out every
15 one of them over thousands of acres? It doesn't make
16 any sense.

17 Now, when we started our organic operation,
18 we realized we couldn't have a year-round good supply of
19 quality beef, grass fed in our area. There may be parts
20 of the country that could. We started bringing in corn
21 from Kansas 900 miles each way. Didn't make much sense.
22 We wanted to play the game.

23 So we went in there and we set out little
24 self feeders in places in small traps. You know what
25 happened? Those cattle would go in and out of there and

1 pretty soon they were destroying the soil around those
2 small traps because of the traffic. It was like the hub
3 of a wagon wheel. They come in there and they leave,
4 they come in there and they leave and they come in there
5 and they leave, and the soil is either going to blow
6 away or wash away.

7 And we called the TDA at that time and
8 said, "You know what? The things that organics stand
9 for, we're violating by overregulation." And we
10 convinced them that we should be able to confine these
11 cattle under certain conditions. And we did, and we
12 were scared to death because the feedlot people that we
13 talked to said, "You're going to lose 20 percent of
14 these cattle." We hadn't thought about that.

15 Well, we gave them lots of room, lots of
16 room, and our death loss was less than the average feed
17 yard and we kept them organic.

18 And you need this 120 days. You really
19 need 140 days to do these cattle right if you want to
20 have -- if you want to produce a product that they'll
21 eat a second time, they need to be on feed and they need
22 it to be a reasonable time. Give them room,

23 Jeff, don't get mad at me for saying this
24 because you may not want the attention. But if you want
25 to see an ideal, a perfect, is you look at the Stiles'

1 operation. They have a feed yard with lots of drainage.
2 They have these little irrigation tanks that cool the
3 cattle if it gets too hot. They have lots of room and
4 those cattle are better and more humanely treated than
5 they are in some little 40-acre thing when they should
6 have 10 cows and they've got 30 cows running out there
7 but they're under regulation.

8 And that's the thing that -- that kind of
9 bothers me. I just think we ought to go to common sense
10 and that we ought to look at how the cows look, not how
11 someone perceives how they ought to be. That's all I
12 have to say.

13 MR. MATHEWS: Thank you.

14 MR. DEES: Uh-huh. Thank you.

15 MR. MATHEWS: Don't run away. Don't run
16 away. Stay.

17 Okay. You also brought up the issue that
18 the water is already covered, protected water, that is.

19 The issue of confining your animal for
20 birthing, we're not looking to do that. Those were
21 examples of when you could confine them if you wanted
22 to. It's not going to be a requirement.

23 MR. DEES: What about weaning?

24 MR. MATHEWS: If you don't want to, you
25 don't have to. Those are just examples of when you can.

1 MR. DEES: Yeah, but it doesn't make a lot
2 of sense to wean one and leave the gate open so he can
3 get back out in the pasture.

4 MR. MATHEWS: Okay. I see what you're
5 saying now.

6 MR. DEES: I don't want to take up too much
7 time, but let me share something that happened to me
8 when I was five years old. We started arriving pretty
9 early, and my dad and uncle had a place together, and
10 they had Herefords back then, and you know the cattle
11 difficulties with Herefords 50 years ago.

12 They had a little place where they had
13 these animals and it was several miles from the house
14 and I -- they put me on a horse and I went out there.
15 And we had four Hereford heifers that had tried to calf
16 and they were broke down and couldn't. And the buzzards
17 had come in there and pecked the eyes out of every one
18 of those heifers and they were still alive.

19 People, we need to take care of the
20 animals. And to force them out into the pasture to be
21 subject to things like that -- I know we have to have
22 these rules and things like that, but it doesn't always
23 work. They can have a foot turn back, they can come
24 backwards. But let's don't regulate this thing to the
25 point it doesn't make sense anymore. Thank you.

1 MR. MATHEWS: Thank you. Well, I agree.
2 You had a lot of good points there and I'm having
3 trouble keeping up with all of them.

4 Anybody else? Mel?

5 MR. COLEMAN: Good afternoon, my name is
6 Mel Coleman. Our family has been ranching in Colorado
7 since 1875. I come from a fifth generation ranching
8 family. And back in the late seventies, when we were
9 going broke selling calves on the commodity markets, one
10 night my sister-in-law was at the dinner table and told
11 my dad that she had some friends that were looking for
12 beef that was raised without hormones and antibiotics.

13 And in 1979, we saved back a couple of
14 calves, fattened them out, put them in the cooler -- or
15 fattened them out, slaughtered them and had them in the
16 cooler. He wanted to make sure they were segregated
17 from the rest. So he bought himself a little roller and
18 rolled "natural" down the side of it and the USDA
19 inspector said, "You can't do that."

20 So two years later, we finally got a
21 definition for "natural" and how livestock was raised.
22 And then what we did, is we got involved with the
23 organic community back in the early eighties and the
24 mid-eighties and participated with -- when the old --
25 oh, back with OFPA. And 20 years ago, we talked about

1 feedlots and the necessity to have feedlots because
2 without -- because there was a large number of consumers
3 that were looking for cattle that were grain fed and
4 graded choice or higher.

5 Well, back in the early days of the organic
6 movement, if you want to call it that, everybody got
7 together and there was the dairy side and the beef side.
8 And what we did, is that we were trying to put standards
9 together back then that would cover a lot of the
10 philosophies and the things that -- that several
11 people -- almost everybody around here has spoke about
12 one way or the other.

13 And now all of a sudden, what we've got is
14 bees and goats and alpacas thrown in with dairy and
15 livestock cattle, when quite frankly I really believe
16 that when we look at humane -- or not humane, but good
17 animal husbandry practices that need to happen with
18 dairy cattle and beef cattle, to some degree they're
19 separate and we have to take a -- we have to take a look
20 at just like Mr. Davies -- is that correct?

21 MR. DEES: Dees.

22 MR. COLEMAN: Dees was saying; we have to
23 take a look at them.

24 So I want to go back to some of the early
25 discussions that we had in 1985 and '86, and then they

1 really got heated up in '87, '88 and '89.

2 But basically "organic" was all about
3 several things. And some of these are mine -- I don't
4 want to exclude the other ones -- or things that other
5 people have had, but it was really -- we wanted to see
6 the reduction of the use of chemicals in agriculture.
7 We wanted to see the -- promote conservation and the
8 sustainability of our natural resources, grasslands,
9 farmlands, rangelands and water. We wanted to improve
10 animal husbandry practices and promote higher standards
11 for animal welfare.

12 You know, interest -- interestingly, some
13 of the proposed rules are an oxymoron to what the
14 original idea was all about because -- because USDA is
15 trying to prescribe things that we don't need, when in
16 order to do organic and to not use antibiotics, as an
17 example, you're going to have to become a better rancher
18 or a better farmer or a better feeder.

19 It's inherent in that. We don't need to
20 write regulations about it. The whole philosophy covers
21 the deal.

22 And the last thing -- going back to some of
23 these philosophical pillars, if you want to call them
24 that, was we wanted to promote the economic
25 sustainability of small, family farms and ranches. We

1 knew that our ranch was trapped into selling cattle into
2 the commodity market, so we wanted to do something
3 different. And there was a growing number of consumers
4 out there that were looking for products that were
5 produced without chemicals. They wanted us, as stewards
6 of the natural resources that we used, to be good
7 stewards of them so that they could go out there and
8 walk through the national forestlands. They want us to
9 take the fences out, not fence the creeks in.

10 When I read what this was all about, it was
11 interesting that I read it about the same time that I
12 was listening to some news thing where there was a dog
13 walking across a pond in Denver and fell through the ice
14 and the fire department had to go out there and get him
15 out.

16 I'm sure that these fencing deals was
17 motivated by some consumer that thought, "Oh my gosh,
18 what's going to happen to your cattle?" I mean, I
19 can't -- I'm thinking back and I can never remember of a
20 cow or a calf walking out on the ice and falling through
21 something and drowning. I just can't remember all of
22 that. Of course, we don't have much water where we're
23 at.

24 But I just don't remember those kinds of
25 things. So it seems to me that the proposed rule seems

1 to have been written without regard for some of the NOSB
2 recommendations. The NOSB was originally set up so that
3 when -- to advise the USDA. It was to be made up of all
4 different kinds of people, environmentalists -- the NOSB
5 was made up of farmers, and ranchers, environmentalists,
6 educators and the kinds of things that -- and we could
7 advise the USDA on the kinds of things that we needed to
8 do to help make the philosophy better, not to write so
9 many rules that we couldn't go on with what the whole
10 concept was about.

11 If you look at some of the other things, it
12 doesn't recognize the different types of livestock. I
13 think we've already gone into that. I think that even
14 we need to look at dairy and beef cattle in separate
15 ways.

16 It ignores the diversity of climate,
17 altitude, weather, and soil conditions, and even the
18 amount of precipitation we get. It removes the
19 flexibility that was intended by Congress to allow
20 producers and certifiers to develop individually
21 tailored organic programs.

22 If you look at a couple of the things -- if
23 we talk about the dry matter intake, it just doesn't
24 make any sense to me at all, and I think that to go over
25 the reasons would just recap everything everybody else

1 is here saying. We could have this -- we could put
2 Texas A&M in this, Oklahoma State there, Colorado State
3 there, and -- and another university here and they would
4 argue all day about it, when really it goes back to
5 healthy animals producing good products for consumers.

6 Feedlots, you know, the 90-day thing came
7 in because back 20 years ago, one of the things we were
8 looking at was we thought that the consumer was really
9 looking for maybe a select product. We thought that the
10 consumer that was looking for the 90-day fed beef was
11 the same consumer that was concerned about the
12 environment, and animal welfare, use of chemicals in
13 animals and all these nice things -- which is basically
14 what organic is all about -- but they weren't.

15 We're finding that there's a greater and
16 greater demand today for choice and prime. Consumers
17 today want more -- there's more demand for prime grade
18 organic beef than there is select grade.

19 Now, let's don't confuse grass fed with
20 grain fed because grass fed is a completely different
21 thing that -- and there's a completely new and
22 thriving -- and I support it -- market out there for
23 grass fed.

24 So I think that rather than 90 days, maybe
25 it needs to be 150 or 160 days because the thing that we

1 have to take into consideration is that in a lot of
2 western ranches, calves are born within a two-month
3 period of time. Consumers want the product exactly the
4 same, 52 weeks a year, day in and day out. And
5 consequently what happens is when you've got one calf
6 product coming on and the other one going off, there's
7 certain times of the year that we can have prime -- or
8 excuse me, choice grade cattle that are only fed 120,
9 130 days, some even 90 if you've got the right kind of
10 breed.

11 And then the next month, what you're going
12 to have to do, is you'll have to have some of those
13 calves, in order to fill next week's production, that
14 have had to be put on feed for longer, and consequently
15 they may have been on feed for 150 or 160 days just to
16 give consumers that -- they want the same product every
17 time every day.

18 So I was recently -- when we were looking
19 at feedlots, and I was with a consumer and he thought
20 the feedlots were really bad, and I took him out to a
21 feedlot where, yes, we do have more space. And I said,
22 "Now, what do you think of these cattle? Do they look
23 really unhappy to you?"

24 They were sitting out there on a mound of
25 dirt, out there chewing their cud. A few livestock

1 owners were out there licking themselves. Their coats
2 nice and clean. You know they are healthy.

3 Then I went out there and I looked at
4 somebody that had 30 or 40 head of cattle out there on
5 about 160 acres and there wasn't but one -- one or two
6 sprigs of grass left. And I said, "Now, does that
7 animal look healthy to you?"

8 "Well, no. But they -- no, I guess they
9 don't." And I said, "Now, the one that you saw that was
10 sitting there on the pile chewing his cud, he got his
11 daily intake in probably one or two hours of eating.
12 And the animal that you looked at out here from daylight
13 to darkness is not able to probably eat enough to keep
14 enough energy to supply enough body heat, okay, to
15 withstand the weather that he's in. So you tell me
16 which is environmentally the most sound. From an animal
17 husbandry point of view, tell me which one is the most
18 sound." And that consumer that experienced what was
19 going on and saw the real world chose the feedlot.

20 We've talked a little bit about fencing,
21 you know, and you were talking about 100,000 acres or
22 so, and I would like to see what -- some of these
23 ranchers up there where we are, you know, it takes -- it
24 takes, up where we are, 40 acres to a cow. And we
25 probably -- national forestland, we've got 250,000 or

1 300,000 acres of streams and rivers all over the place.
2 I would get shot if I tried to fence off every creek and
3 every pond and every spring.

4 UNIDENTIFIED SPEAKER: Nobody would let
5 you.

6 MR. COLEMAN: Number 1, they probably
7 wouldn't let us. But the other thing is, is that the
8 people that would oppose that the most are the -- are
9 the same people that are probably the 80,000 respondents
10 that don't have any practical experience about what this
11 whole production system is all about.

12 Anyway, as I flew down here from Denver
13 today, I looked out the window. And every time I looked
14 out, I couldn't see any trees at all so I really
15 questioned this whole shade thing. And I think that the
16 good Lord maybe got confused.

17 You know, when I was standing outside, you
18 know, we're all wearing coats, you know, and these
19 animals wear coats, too. And I think that the good Lord
20 provided a way for them to take the heat and the cold to
21 a certain degree, so --

22 When you talk about growing seasons, I -- I
23 need to debate the 120 days because in Saguache,
24 Colorado, there's guys that will debate even whether we
25 get 110. You go a little bit further west than that and

1 I can remember you could almost walk on the ice that was
2 still on the beaver ponds on the 4th of July one year,
3 okay, and then it snowed in late August. So what's that
4 give you?

5 And so, you know, with all due respect, I
6 think that Washington, D.C. has got enough things to
7 worry about and I don't want organic agriculture to be
8 the next group that says, "We need a handout to stay in
9 business."

10 MR. MATHEWS: Thank you, Mel.

11 Yes, sir?

12 MR. WARSHAWER: Thank you. I hate to
13 follow Mel, but I'm going to give it a try. Someone had
14 to.

15 I work for La Montanita Cooperative in
16 Albuquerque, New Mexico. We have 16,000 member owners.
17 We have four retail stores. We support our local
18 producers and regional producers of all agricultural
19 products and are very concerned and interested in the
20 effectiveness of the organic program.

21 And I think part of why I jumped up to try
22 and speak next is to see if I could get some traction,
23 if you will, on the distinction that's being made
24 between how beef production works and how the consumer
25 experiences beef production and how the dairy side

1 works.

2 But before going off on to that, I just
3 want to talk real quick on the producer points.
4 Sacrificial pasture, like everyone is saying, won't work
5 out west. The dry matter intake basis doesn't take into
6 account the reality of feeding in a seven-hour
7 (unintelligible). The fencing rules won't work for us.
8 We've got a lot of places that we won't be able to
9 fence, economically, and it will also keep our animals
10 from getting to the water that they need to get to some
11 times of the year. And we do need properly-managed dry
12 lots. And if you want to call them feedlots, that's
13 okay.

14 The one distinction that might help on that
15 growing season question is the distinction for us in the
16 west between growing season and grazing season. And we
17 have a lot of our stewardship practices that are
18 revolving around balancing dormant-season grazing, which
19 can only provide a certain portion of the animal's feed
20 needs, with the need to stay off or in controlling the
21 pasturing during the limited growth period.

22 So in essence, your growing season
23 definition is almost the upside down to what we
24 experience in terms of effective stewardship and
25 expected range management out west.

1 So to take from there -- and I think almost
2 everyone that stood up to speak from the producer's
3 standpoint has covered these technical details far
4 better than I could so I don't want to take up your time
5 with that. But I really wanted to talk about the
6 marketing aspect and I think the difference between the
7 dairy and the beef side helps to illuminate that.

8 Mel talked about the emergence of the
9 definition of "natural". When you talk about beef, you
10 have a marketing continuum where the consumer has many
11 choices. It's not just organic or not. It's organic or
12 natural or commodity or grass fed.

13 Now, part of, I think, the reason why we're
14 in the mess that we're in, trying to satisfy everybody,
15 is that on the dairy side we don't have but two choices;
16 we have organic and we have non-organic.

17 Now, in our store, we have -- we have tried
18 real hard to develop a representative market for the
19 antibiotic and hormone-free dairy and we think that's a
20 crucial opportunity to add further differentiation that
21 would actually support a clear understanding of the
22 meaning of organic without taking away some of the value
23 and the attributes or preferences that consumers want to
24 vote for with their dollar.

25 So just for example in our store -- our --

1 our stores, our natural milk -- which isn't labeled
2 "natural" because there's no such definition, but it is
3 hormone and antibiotic free -- comes from a medium-sized
4 local dairy and we actually opened up our trucking and
5 distribution system to help that producer get access to
6 more markets. And he doesn't want to go organic and our
7 member owners don't expect him to go organic, and they
8 do prefer to pay a premium for his milk than for milk
9 that would have been of unknown source with regard to
10 that question of antibiotic and hormone.

11 So what I -- I think it's a very important
12 step that -- first of all, that we not ignore consumer
13 preferences, with all due respect to counsel here. But
14 the consumers' expectations do drive, in many ways, our
15 definition of the product and that we are in difficult
16 ground with dairy because we only have these two
17 choices.

18 So I think that's what's creating this
19 pressure on the organic market to expand, expand, expand
20 and provide more products. And I think that pressure is
21 artificial and I think it's damaging to the goals and
22 expectations with which the organic dairy industry was
23 founded. And I think it can be addressed better through
24 a more differentiated set of marketing plans. And I
25 think the beef industry has shown us already a model

1 that we should be following with dairy.

2 I think it's very important that we not
3 allow organic to simply become defined by what's not in
4 the product. It's not a product-based system. It's as
5 much a practice-based system as it is a system based on
6 what ends up in the -- what has or has not been found in
7 the products subsequently or after it's been finished.

8 One way that that's real important to keep
9 in mind is that we don't even have control over some of
10 the things that end up in our products. We may control
11 what we put into them, but we don't control all of the
12 things that may end up in them.

13 So if we take the position that organic is
14 defined by being pesticide free, antibiotic free, etc.,
15 we ignore that there are sometimes contaminants that are
16 beyond our control that come into the food supply at
17 varying levels and through varying processes, and we
18 can't burden the producer at this point with
19 responsibility for what ended up in that product.

20 We burden them with that responsibility
21 precisely by talking to them about their practices. So
22 the way that the organic definitions are supposed to
23 work is by -- by guiding a best-practices process
24 towards a desired set of outcomes in the product.

25 And so here what I see is that, you know,

1 we are forced to address a growing demand for organic
2 milk in part because we've stifled the proper next
3 differentiated product that the consumer wanted which
4 was something in between a traditionally-produced dairy
5 product and the organic dairy product, and that would be
6 a natural or antibiotic and hormone-free produced milk.

7 And I think that -- that we as -- as people
8 who are concerned with the public health and safety and
9 are concerned with the future meaning of organic and
10 with opportunities in organic, we need to find a way, if
11 we can -- and I don't believe you're here to address
12 that -- I think some people in the audience actually may
13 have more power to impact this than you do. So in that
14 sense, I'm actually embarrassed to bring these comments
15 to you, but I think they are relevant to what was just
16 presented.

17 I think it's our responsibility, both on
18 the marketing side and retail, such as what I represent,
19 as well as in the production side among the dairy co-ops
20 and the dairy producers to listen when the consumer
21 says, "We want milk that's hormone and antibiotic free.
22 We want to know that it was produced from cows who were
23 not fed supplemental antibiotics at below therapeutic
24 level or were not used -- were not subjected to the use
25 of growth hormones." That's a consumer preference.

1 If we would honor that preference, we would
2 take a lot of pressure off of the organic rule-making
3 process because there would be that additional gradation
4 of attributes which I think is what the consumer is
5 looking for.

6 And then the last thing to say is that the
7 current rule, if it were enforced as written, would
8 work. There's enormous problems related to consistency
9 of application of the existing rule. If we don't have
10 the capacity among our certifying agencies to implement
11 the rule as written, how will we ever, ever implement a
12 more prescriptive, more detailed and more cumbersome set
13 of regulations.

14 I think what will suffer, if this rule goes
15 through as written, is that the emphasis on the Organic
16 System Plan will go away. The Organic System Plan which
17 is really the heart of the organic rule making in terms
18 of allowing a certifier, in collaboration with a
19 producer, to create a plan that works towards the goals
20 of organic on their land, that will go away and it will
21 be replaced with a pile of spreadsheets. And in the
22 end, that pile of spreadsheets will not give the
23 consumer what they want.

24 I think that the consumer is more and more
25 sophisticated, has more and more access to high-quality

1 information about the decisions that we make on our
2 land, in our animal husbandry and our production
3 practices and that they do not expect a "one size fits
4 all" solution.

5 What they expect is that through this
6 dialogue and this process around the implementation of
7 the organic rule, that we become better and better
8 stewards, that we produce a healthy product. And
9 ultimately, I think it's also their expectation that we
10 identify these higher bars, like grass fed, and that we
11 identify the intermediate positions, like natural, and
12 that we make these -- this what I call a continuous
13 different -- a continuum of clearly differentiated
14 products available to them at fair prices. In other
15 words, at a price that's appropriate to that method of
16 production.

17 So what happens when we go -- basically go
18 binary, like the dairy world has, and you're either
19 organic or you're not, is we defeat the potential for
20 the traditional dairy world to achieve better prices
21 through the attainment of natural practices, and we also
22 defeat the organic dairy world's potential to keep
23 increasing the quality of production and the husbandry
24 practices that they bring to bear. Because the prices
25 are compressed, there isn't this range of choices, and I

1 think in the end, both consumer and producer are harmed.

2 I think what we need to do is look at why
3 the current rule didn't work, and I think that has a lot
4 more to do with certifying capacity than it does with
5 the rule itself. And we need to look at the fact that,
6 as everyone has said here, agriculture in the west is
7 very different than agriculture in other places, and
8 even agriculture in the west from year to year is
9 different.

10 And I think what's going to happen, as time
11 passes with this climate change, that is that more
12 producers in more parts of the country are going to see
13 how difficult it is to shoehorn their practices into
14 something as proscribed as the current proposed rule.

15 I think the rule can be -- as it's being
16 proposed, I think it can be made to work, but I don't
17 think that enough work has been done to understand the
18 beef industry and to incorporate its needs. I think the
19 prohibition against feedlots and dry lots is absolutely
20 not workable for the beef industry.

21 But I think -- but I agree that we've kind
22 of gotten off -- lost our -- gotten our eyes off the
23 target and we're getting into a narrower and narrower
24 range of definitions that's going to exclude more and
25 more producers and ultimately harm the consumer in the

1 process.

2 Thank you.

3 MR. MATHEWS: Thank you.

4 MR. MOORE: May I borrow the podium?

5 MR. MATHEWS: Sure.

6 MR. MOORE: Great. Face my peers here, if
7 I can.

8 Hello. Thank you for having this
9 listening session here in Amarillo. I appreciate the
10 opportunity to speak. My name is Charlie Moore. First
11 and foremost, I'm an organic consumer. Yes, I'm a
12 producer. Yes, I'm a manufacturer of organic products;
13 beef, chicken, pork, turkey. But first I'm a consumer
14 and so I'm speaking from my heart, as well as I'm
15 speaking from the thousands of people in the natural
16 organic community that I represent here today.

17 My role is vice president of sales and
18 marketing for Maverick Ranch Natural Organic Meats. We
19 are a Denver-based natural and organic meat company with
20 250 employees. We were founded in 1985 by my father Roy
21 Moore and my three brothers and I out of our 4H
22 projects.

23 We have -- over the last 20-some odd years,
24 we have purchased and built up two USDA meat-processing
25 plants and both are certified organic by the Colorado

1 Department of Agriculture. Our first foray into organic
2 sales was an experiment in Boulder, Colorado, one of the
3 hubs of organic consumerism, in 1997 in an Albertsons
4 grocery store.

5 Our branded Maverick Ranch products are
6 sold in 3,000 grocery stores in 34 states, which is --
7 roughly 10 percent of all the grocery stores in the
8 United States carry at least one of our brand of
9 products or private label. Our products are sold to six
10 of the top ten grocers in the U.S., including Kroger,
11 Safeway, Costco, Albertsons, Super Value, Wal-Mart,
12 Super Target, and just keep on going down the line, if
13 you'd like.

14 We have over 30,000 linked consumers who we
15 communicate with via an electronic form. They tell us
16 specifically what they like and what they don't like.
17 They tell us when we screw up. They tell me when our
18 products are not on the shelves or in stock on time.
19 They tell me if a package is broken or if the meat
20 smells bad one day.

21 As we all know, once it leaves my control,
22 I can't tell what's going to happen in transportation,
23 what's going to happen at the grocery store with their
24 team management.

25 But I want to point out that we have this

1 forum of consumers 30,000 strong, and unlike Whole Foods
2 and some others out there, I haven't unleashed those
3 consumers on this -- on this agenda, even though it has
4 crossed my mind.

5 We sell both grain-fed, choice-grade
6 organic beef, and that's usually choice or higher, as
7 well as a clear and a very separate category of
8 grass-fed organic beef, and I think that's going to be
9 the main point that I want to leave with you all today,
10 is there really is a very clear distinction out there.

11 I don't think there's many more people in
12 the organic and natural community like Mel over here and
13 myself who have this experience, gentlemen from the
14 cooperatives who have this experience with consumers in
15 listening to what they want over many, many years in
16 this category. We're certainly not newcomers to this
17 because there's a quick buck to be made. This is our
18 lifestyle. This is our choice.

19 Additionally with all of this, I'm an owner
20 of Rocking M Cattle Company which is a 40,000-acre
21 cow/calf operation in Wheeler, Idaho. My father
22 purchased it when I was three years old. We are a five
23 generation ranching family dating back to 1881. In
24 those five generations, we have ranched in six states,
25 both with owned properties or leased properties. We've

1 owned both cow/calf operations, we've owned our own
2 feedlots, and as I said now, on the meat processing
3 side, so we have encompassed all phases from birth and
4 the ranch gate to the consumer's dinner plate.

5 Because of this background, I completely
6 understand the specifics to raising cattle, both grass
7 fed as well as grain-fed cattle.

8 And lastly, one of the important things
9 that we're proud of, our family believes that we have
10 the most winning record of carcass champions in the
11 United States. Now, carcass is a side of beef hanging
12 in a cooler. And the Super Bull of the cattle industry
13 is arguably the National Western Stock Show in Denver
14 that's held every January. And our family has won grand
15 or reserve champion 13 out of 19 times for beef carcass
16 quality, and that's both either a -- a grocery category
17 or a food-service category because they actually grade
18 beef differently for each category depending on what
19 consumers want.

20 Point is I want to show you
21 differentiation. I have several comments that I want to
22 talk about. First off, on behalf of the 250 employees
23 that I am here representing, thousands of livestock
24 producers that we currently purchase from or have
25 purchased from in the past, or will certainly purchase

1 from in the future, from the hundreds of grocery stores,
2 both individual as well as corporate, and the
3 restaurants that carry our products, we're asking for a
4 90-day extension period to this comment period.

5 I'm asking for that because I don't fully
6 believe that consumers today have a broad enough
7 understanding of what is happening here and what will
8 happen to them if your proposed changes -- or I
9 shouldn't say "your proposed". But if these proposed
10 changes happen, it will almost virtually wipe out an
11 entire category of beef that will just fall off the face
12 of the Earth because of a belief that all cattle should
13 be out in the pasture 24/7, except for inclement
14 weather, 365 days a year, or something to that extent.

15 And I know I'm exaggerating there a little
16 bit, but the point is: We're asking for an extension of
17 this period, preferably 90 days, but 60 days would be
18 adequate, so that consumers, the people that are
19 actually spending their money on this product, and
20 retailers and food service operators can rally behind
21 us.

22 I've been trying for the last two weeks to
23 get people here to these sessions and it was not quick
24 enough. It wasn't far enough out that I could get the
25 meat director from Safeway here or the meat director

1 from Ruth Smith's steak house or the meat director from
2 Kroger, meat director from Publix. I invited all those
3 people to all of these sessions and they all said, "This
4 isn't -- this isn't something I can do. We have the
5 holidays on our hands right now." And what are we
6 fighting today? We're fighting turkey battles. Turkeys
7 are a huge driver for store sales and it's a very, very
8 important time of year for retailers and this is not the
9 time they can get out of their office.

10 For about 60 days prior to the new year,
11 they won't even see us because they have so much to do
12 with turkeys, so the last thing they want to do is come
13 out and comment on this. Now, hopefully they will rally
14 and provide their comments before the December 23rd
15 deadline. But I'm asking for that extension for that
16 reason.

17 My second point, the water quality issue
18 and proposed changes to fencing out water sources is
19 over prescriptive and not necessary. This is already
20 covered by the NRCS and local and state-specific laws.

21 Additionally, this would impose a great
22 financial burden on all current and future organic feed
23 cattle production. I believe the regs for the proposed
24 changes were centered specifically more around dairy
25 production. I don't think that the average beef cattle

1 operation, whether it be grass fed or grain fed, was
2 taken into any account whatsoever of this change on
3 fencing out of water.

4 For example on our 40,000-acre ranch, just
5 to give you an idea of size, because most people don't
6 think in acreage terms, unless you're from a ranching
7 background, or farming, it's 50 square miles. Okay.
8 That's as if a satellite were looking down on it. If
9 you were to take it and pound it all out, it would
10 almost double in size because of our mountains. We have
11 six different mountain ranges on our ranch. With the
12 various springs that are in between, we have over 1,000
13 springs. We have over 250 miles of waterways on our
14 ranch.

15 I can tell you right now I have no intent
16 whatsoever, nor will I ever be willing to fence out
17 those -- those waterways. It would be an abomination to
18 do that to the wildlife that are in the area because
19 once we fence out those waterways, the elk, and the
20 deer, as the two primary species that would be the most
21 affected, would leave our property.

22 In 1994, my family sold a conservation
23 easement to the State of Idaho and the Rocky Mountain
24 Elk Foundation to improve the habitat on our ranchland.
25 We wanted to do that. It wasn't because we felt great

1 about the elk. It was about survivability. The average
2 cow/calf producer today can't make it on just raising
3 conventional cattle. So it would defeat the purpose of
4 the conservation easement that we put onto our land,
5 Number 1.

6 Number 2, it would be cost prohibitive. To
7 give you an idea, our ranchland has an average slope of
8 35 degrees, and that ranges anywhere from 15 degrees to
9 70 degrees. There's some areas that are so steep that
10 most people wouldn't want to ride horseback to go get
11 those cattle that are up there on that hillside.

12 At an average cost today, current market
13 cost is \$5,000 a mile to fence our land. When my father
14 bought the ranch in 1972, it didn't have any cross
15 fencing on it. We have since divided it up into eight
16 pastures which we rotationally graze throughout the
17 year. We have low season, we have high season grazing.
18 We have areas reserved for wintertime feeding which is
19 confined because there's a 500,000-acre pasture that
20 we're using for -- for feeding.

21 And yet because it has a fence around it, I
22 call that confinement. And I think every rancher here,
23 farmer here, would also call that confinement.

24 Now, is that what the consumer calls
25 confinement? I don't think so.

1 Next point, third point, I submit to you
2 that the majority of organic meat consumers require and
3 demand grain-fed, choice cattle, not specifically
4 grass-fed cattle. By my own observations, the vast
5 majority of consumers, I'd say about 90 percent, who
6 currently purchase organic beef expect a quality and
7 style comparable to conventional beef.

8 Now, what does that mean, "comparable"? It
9 actually means grain-fed, choice-grade cattle. Okay.
10 It means that the palatability, the taste, the
11 tenderness, the attributes that say, "Wow, that's a
12 great steak, that's what I want to have for dinner,
13 that's what I'm going to spend the biggest part of my
14 consumer or my grocery dollars on, beef, that's what I
15 want, I want it to be great, time in and time out."

16 Simply put, you don't get that from
17 grass-fed beef. It does not happen. With over
18 70 percent of all beef purchased -- and I'm excluding
19 ground beef out of that category -- I'm talking steaks
20 and roasts, being grain-fed steaks and roasts, graded
21 USDA select or choice or prime organic beef must have
22 these identical attributes as it comes to palatability.

23 Grass-fed beef, specifically pasture-raised
24 cattle, as what is proposed here do not meet these
25 eating quality expectations in any stretch of the

1 imagination. It is leaner, it is tougher, and can often
2 have a bitter, tangy flavor that most people say tastes
3 slightly metallic.

4 Now, like Mel here, I have given hundreds,
5 if not maybe thousands of demos of our products in
6 grocery stores throughout the country until we're blue
7 in the face, and I can't tell you how many times we have
8 served grass-fed beef -- because I do have a grass-fed
9 program -- specifically grass-fed, organic beef, and
10 people spit it back out and say, "You know what, I
11 wouldn't serve that to my family if you gave me the
12 package and I took it home for free." It doesn't meet
13 their flavor expectations and their taste expectations.

14 I submit to you that three of my largest
15 customers, people that I have invited here, Safeway,
16 Kroger and Publix -- these are the Number 2, the Number
17 3 and the Number 6 largest grocery chains in the U.S. --
18 will not carry organic beef steaks that is not heavily
19 grain-finished beef.

20 We all know the way to get heavily
21 grain-finished beef is to put them in a feedlot. And
22 the idea of a Stiles'-type operation, this is the name
23 that those in this industry know, that is pasture-based
24 grain feeding does not work. I'll explain later.

25 Kroger and Safeway, which has nearly 4,000

1 stores or 12 percent of all U.S. grocery stores, will
2 only stock organic beef steaks if it is grain fed and
3 graded USDA choice, period. I have tried until I'm blue
4 in the face to present to them our grass-finished
5 organic program and they will not take it. Their reason
6 they give is, if a consumer is going to spend \$25 to \$35
7 a pound for a tenderloin or \$18 to \$22 for a rib eye or
8 a strip or \$9 to \$15 a pound for a top sirloin steak, if
9 they're going to pay these kind of numbers which are
10 often two and three times higher than conventional beef,
11 it better be the best darned steak they've ever eaten.
12 It better be like the Why Not or Ruth Smith's steak
13 house or Double Eagle or some other well-known steak
14 house and it better just be memorable; otherwise,
15 they're not going to put it on their shelves.

16 And if they don't have it on their shelves,
17 are we going to deny the consumer organic beef? The
18 answer is yes.

19 Publix, a Florida-based chain with 1,000
20 grocery stores in it, a privately-held corporation,
21 recently canceled my grass-fed organic beef program due
22 to consumer complaints about meat quality and seasonal
23 supply availability. They told me, "Charlie, if you
24 can't have the product in here 365 days a year and in a
25 quantity sufficient to supply 1,000 grocery stores all

1 at the same time, we can't carry your product."

2 We're not a produce department. We don't
3 have seasonal supply of certain type of products. It's
4 either there or it's not. You don't get a choice. The
5 only way to eliminate or minimize these two issues is to
6 allow the use of combined feed on beef-type cattle for
7 the sole purpose of grain feeding these cattle to a
8 choice grade or higher, which would be prime, and to
9 allow year-round availability that only grain feeding
10 allows.

11 A grass-feeding operation will not work,
12 and that's for those two attributes, those two areas of
13 problems.

14 I submit to you as an expert in beef
15 carcass and meat quality that a minimum of 120 days is
16 required to finish cattle to a choice grade, and that
17 many breeds, like Salers, Limousin, Charolais,
18 Simmental, Gelbvieh, Braunvieh -- I could just go on --
19 these types of cattle will not grade in a 90-day period
20 to that choice grade. A lot of those that I just
21 mentioned, those cattle that are not Angus or Hereford
22 based, can take at least 120 days and more likely closer
23 to 150 days. That's the reality of cattle feeding.

24 And we've got some cattle producers and
25 feeders here who can certainly echo that sentiment. So

1 the 90-day or 120-day exemption works to a point, but
2 it's not going to work in all areas of the country.
3 You've got to take into account the age of the animal,
4 what weight it went in, was it recently weaned, was it
5 backgrounded on good pasture?

6 And good pasture could be irrigated pasture
7 in some parts of the country, it could be great highland
8 pasture that's not irrigated. It depends on the
9 rainfall.

10 So it depends on the age and condition that
11 that animal went into feeding, so there isn't a "one
12 size fits all" approach seen to cattle finishing in a
13 feedlot. So these -- these traits that I've talked
14 about in meat quality and what the retailer will stock
15 will not work in a strictly pasture-raised system or
16 grass-fed system.

17 I was at the Chico listening session last
18 week with you and I recall some comment in there that --
19 that the consumer expects organic beef to be pasture
20 raised.

21 MR. MATHEWS: Uh-huh.

22 MR. MOORE: Okay. I submit to you that
23 there are five main reasons why consumers seek out and
24 choose to spend two to three times higher for their
25 beef -- their organic beef than for conventional beef.

1 And I would say that these five are the pillars of what
2 the consumer is looking for in organic beef. And you
3 know we can find a number of people out there that
4 certainly insist that, yes, organic beef should be
5 pasture raised their entire life. Well, guess what?
6 It's not practical. It doesn't work.

7 I submit to you that those five are; one,
8 that the total system is third-party certified and it's
9 validatable. The challenge with the "natural"
10 definition today of the USDA for natural beef is
11 processed with no artificial means that has no bearing
12 whatsoever on how that animal is raised -- okay -- the
13 fact that it was raised conventional, as we call
14 conventional. All right.

15 But there are plenty of companies out there
16 who exploit that. My company has been one of those
17 people who have exploited that weak definition that the
18 USDA has provided us and that's why I believe folks like
19 Mel, who have fought year in and year out for
20 credibility in this industry and who have fought and
21 gone to the USDA and to Washington, D.C. numerous times
22 to bring a sense of validation and credibility to our
23 industry.

24 And that's what the organic certification
25 does, that's what the third-party validation does that

1 we don't have in natural, that we don't have in
2 conventional. The consumer wants credibility. And I
3 submit to you that the thing that we are selling them is
4 not organic beef, we're selling them confidence,
5 confidence in a product that doesn't have -- my second
6 point -- no antibiotics ever.

7 My third point, no added growth hormones
8 ever.

9 My fourth point, vegetarian fed, no animal
10 by-products in the feed.

11 My fifth point -- and I actually have a
12 sixth point I just thought of -- no pesticides. One of
13 the cornerstones of organic production, as well as
14 marketing, is that there are no pesticides in the
15 product, either in the feed that went into it, the land
16 that went into it -- and not just right then, but the
17 three years prior, okay, giving some teeth to it.

18 Last area would be no GMOs. Okay. The
19 consumer is blind at what's happening in our country
20 with the rampant use of genetically-modified organisms
21 in our feedstuffs and our food supply. Most other
22 first-world nations have outlawed to a much larger
23 degree genetically-modified foods than we have here.

24 Monsanto has done a great job to make their
25 point well known and they put their dollars wisely to

1 their people in Washington, D.C.

2 It is Maverick Ranch's request that you
3 eliminate the proposed rule changes that eliminate dry
4 lots and feed lots. Eliminate it. We request that you
5 leave the rules as they are currently or spend the
6 appropriate time and research on beef and grain-specific
7 operations to draft regulations that meet both consumer
8 taste expectations and the practical realities of
9 confined-feeding operations.

10 If you truly believe that the consumer
11 doesn't want or won't buy grain-fed, finished beef
12 that's been finished up to 150 days in a feedlot for
13 organic cattle, I submit to you to let them make the
14 choice. Don't regulate it for them. Let them make the
15 choice.

16 And I'll tell you how I would -- one idea
17 of being able to do that: Let them choose in a
18 free-market way. I would be very agreeable to putting a
19 statement on my organic, choice beef label that, "These
20 cattle were confined to a feedlot for up to 150 days for
21 grain finishing." I don't have any issue with that.
22 Then if the consumer doesn't believe in this practice,
23 then they can choose not to buy it.

24 If this label were to happen as I suggest,
25 I don't think that we'll have any measurable consumers

1 stop buying that USDA choice, grain-fed, finished beef.
2 My point is: Let the consumer choose, don't over
3 regulate the organic beef category so that the consumer
4 doesn't have access to it or doesn't drive the cost of
5 it so high that they can't afford it.

6 The consumer wants organic beef, but they
7 also want grass finished over here for this customer who
8 is looking for the higher CLA, the higher Omega-3s.
9 Some people actually like that flavor profile. It's
10 just not a large segment of them.

11 Now, for Mel and I who grew up on a
12 cow/calf operation, we eat a lot of lean beef, a lot of
13 grass-finished beef. Okay. But because that's what we
14 were raised on, we like that. Okay.

15 As a consumer -- as a consumer, I will
16 choose a leaner cut over a more marbled cut, okay, but I
17 was raised on that flavor profile that comes from
18 grass-finished beef. Okay. It's only once in a blue
19 moon that I will choose to go out to an operation to
20 have a more marbled piece of product.

21 The point is: When it comes to organic, my
22 choice as a consumer, I'm most concerned about the
23 antibiotics, pesticides, and the modified-growth
24 hormones, the all-vegetarian feed and the no GMOs. That
25 is the principles which the organic beef consumer is

1 looking for.

2 Thank you.

3 MR. MATHEWS: Thank you.

4 Next?

5 MR. SWEETEN: Thank you, Mr. Moderator.

6 I'm John Sweeten. I'm resident director of research at
7 the Texas AgriLife -- for Texas AgriLife Research at
8 the -- here at the Texas A&M AgriLife Research and
9 Extension Center where you're having this meeting. And
10 we would thank you for this.

11 I don't envy you for trying to craft a
12 national policy on anything, certainly anything that
13 pertains to production practices. That's quite a
14 daunting challenge.

15 There have been a lot of good comments
16 made, but I want to narrow -- focus pretty narrowly on
17 one. As alluded to earlier, I would respectfully
18 request the following modification of proposed rules
19 under 7 CFR Part 205 relating to the National Organic
20 Access to Pasture Rule namely as follows:

21 As to Section 205.239(f), should be
22 modified to stipulate that the operation in outdoor
23 areas shall be designed and managed in accordance with
24 water quality management plans and practices certified
25 by the appropriate water quality agency of each state.

1 And additionally, the term that is stated in that
2 paragraph, quote, "to prevent", unquote in Line 12, need
3 to be changed to something on the order of, quote, "to
4 mitigate", unquote, otherwise it is much more
5 restrictive than the applicable state and federal water
6 quality management policies and best management
7 practices under federal and state requirements and that
8 of USDA-NRCS-EQIP programs.

9 And I appreciate your consideration of this
10 matter. I would really strongly encourage that at the
11 federal level, that NRCS and EPA, at the office of
12 agriculture -- advisor to the EPA administrator be
13 consulted in this matter. I think there's no -- no
14 reason to wander off out into something that's been
15 developed over the last 36 years, virtually since the
16 passage of the 1972 Federal Clean Water Act, all the
17 amendments thereof, all the rules, all the policies that
18 the states have all followed in line to conform with by
19 imposing new definitions, new standards that have almost
20 nothing to do with the quality of the product or the
21 supply of the product.

22 Thank you.

23 MR. MATHEWS: Thank you.

24 Anyone else?

25 MR. PRICE: Thank you. Travis Price,

1 manager of the New Mexico Organic Dairy, one of the two.
2 We do pasture our cattle. We're in a section here in
3 Eastern New Mexico/West Texas where we don't get a lot
4 of rain. Last four or five years, I'm probably going to
5 say eight, nine, ten inches a year on average.

6 We worry about some of the rules that are
7 proposed here today, such as the sacrificial pasture and
8 where are we to put these cattle out. Already it takes
9 so much land, because of our dryland nature, very little
10 irrigation in our area, to get cattle out on pasture and
11 get, right now, the proposed 120 days for pasture a
12 year.

13 And to have a sacrificial pasture in land
14 just for cattle to go and be beneficial to them while
15 the other pastures recover from heavy rains -- because
16 when it does rain in our area, it seems like we get the
17 three or four inches at one time, so things are pretty
18 saturated. Cattle tromps it down, it's pretty rough on
19 the pasture.

20 The sacrificial pasture, it would cause me
21 to be running cattle maybe even up to two and a half,
22 three miles from the dairy just to get them out of the
23 lot. We are an open-lot dairy.

24 Pasture management is close. I mean,
25 depending on rainfall a year, sometimes -- year before

1 last, I know the average cow on my dairy averaged 286
2 days for the year on pasture. This year, I mean, we
3 were pushed to get 130.

4 Soil erosion also -- sacrificial pasture,
5 like I said, when you start walking cattle too long from
6 your dairy, you start worrying about soil erosion even
7 on permanent pathways.

8 Cattle health is our Number 1 concern at
9 our place; I'm sure at most places that deal with
10 cattle.

11 I worry about the energy wasted getting
12 them away from the dairy to get out to proper pasture or
13 beneficial pasture and then getting them back from the
14 dairy to get them milked.

15 We don't feed on high energy uses. In
16 other words, we keep our corn levels down as best we
17 can. It just seems like a more forage-based ration is
18 healthier for the animal.

19 I sure worry about dry matter intakes on
20 pasture and having to come up with this 30 percent. It
21 would -- in our case, to tell you the truth, over the
22 last three-plus years, it would be a -- I would almost
23 say it would be almost impossible in some areas to gain
24 the 30 percent dry matter intake.

25 We do let the animals out. They are out to

1 pasture. We consider the pasture -- or actually
2 consider the pen maybe an extension of the pasture.
3 That way we are able to do our vaccinations and
4 properly -- properly check the animals. And I don't --

5 I sure do appreciate you coming and
6 allowing me to comment today. Thank you much.

7 MR. MATHEWS: Thank you.

8 Next?

9 MR. LIEB: Thank you. My name is Johnny
10 Lieb. I represent one of the other organic dairies in
11 New Mexico, as well as being crop producers in New
12 Mexico, and I would just -- I do appreciate the
13 opportunity today.

14 Some of the things that bother me are some
15 of the specific nature of some of the regulations that
16 are being proposed. I think that if we go back and look
17 at the origin of organic production all over this
18 country, I think that we've lost sight a little bit
19 about what some of the specifics -- the general
20 principles of what we're all about and where organic
21 production came from.

22 As people began to realize the synthetics
23 that had crept into our food system in this country, I
24 think that organic agriculture began to want to address
25 that, and that's one of the things that seems that I

1 have learned from delving into organic production. And
2 as I look at trying to legislate something from a
3 national level, some of the things that really bother me
4 are some of those -- specific nature of some of the
5 rules that are being proposed.

6 The sacrificial pasture system, for
7 example, just jumps at me very quickly because we're in
8 a very fragile environment in Eastern New Mexico and
9 what would work -- and probably this rule would be good
10 in a very tight soil back in New Hampshire -- I don't
11 know. I'm not sure I would even know where it would be.

12 However, I know that when you get to our
13 country, that sacrificial pasture would probably become
14 a wasteland as a result of the treatment that it was
15 receiving.

16 As you look also at the 70-percent DMI
17 level maximum being fed, I think then we begin to lose
18 sight of the fact that the organic animal is what is at
19 stake here and what is best for -- for their -- their
20 welfare.

21 All of those things being said -- and
22 looking at the growing season, there's vast differences
23 in the growing season of various places and then all of
24 that seems to depart from the spirit of organic
25 production. It departs from the passion.

1 And I just -- for example, I'll give you an
2 example on that. In one -- in our country, the growing
3 season is also the growing season for weeds. And in
4 organic production, we don't use synthetics, we don't
5 use chemicals and that sort of thing; therefore, we're
6 not able to fight those weeds other than through
7 sustainable agriculture like rotation, use of various
8 crops, use of different times of the year.

9 We might be able to graze wheat, winter
10 wheat, which is not the growing season as defined by
11 "last frost to first frost," if you know what I mean.

12 MR. MATHEWS: Uh-huh.

13 MR. LIEB: I guess what -- the bottom line
14 that I'm -- would be opposed to some of the specific
15 rule-making, legislating the way we're going to do
16 organic agriculture in the U.S. of A and it has to do
17 with the departure from the principles that make it
18 work.

19 And the very thing, I think, that makes it
20 work is passion. If people don't have the passion,
21 there's going to be people who you give them a set of
22 rules and they're going to use it as a road map to
23 skirting the system. Passion is something you cannot
24 legislate.

25 MR. MATHEWS: All right. I agree we can't

1 legislate passion. And actually the whole reason why
2 we've got this proposed rule is because of problems that
3 we've seen over time and we're trying to address them.

4 Such as the sacrificial pasture, the
5 concept was to stop those who use any amount of rain as
6 an excuse not to put their animals out on pasture.

7 Clearly what I've been hearing around the
8 country is that's not a -- sacrificial isn't a good fix
9 for that particular problem.

10 Anyone else? I'd come to you, but I'm on a
11 short leash here.

12 MR. McDONALD: That's fine. I'm getting
13 pretty good with these things.

14 MR. MATHEWS: Okay. Do you want to be able
15 to stand behind here and that will give you something to
16 lean on?

17 MR. McDONALD: I appreciate the opportunity
18 to comment. My name is Jim McDonald. I'm an assistant
19 professor of animal nutrition here at Texas AgriLife
20 Research. I have a PhD in ruminant nutrition and
21 research expertise both in feedlot nutrition and in
22 grading livestock systems, especially supplementation
23 strategies for cow/calf nutrition and growing yearlings
24 through the northern and southern Great Plains.
25 Originally from North Dakota, have moved down to Texas

1 and so I am familiar with most of the Central Great
2 Plains states.

3 One of the things that I would challenge
4 you to think about is that it appears that there's some
5 confounding in what is an animal's natural behavior and
6 an animal's health and wellbeing.

7 It appears that this ruling tries to couple
8 those two things and they are very clearly not always
9 coupled. What is correlated is the health and wellbeing
10 of an animal and it's productivity. Many of the
11 strategies that we use in production agriculture which
12 improve productivity do that because they improve the
13 health and wellbeing of the animal.

14 Where I think this becomes a clouded issue,
15 and the reason that I would submit to you, as a feedlot
16 nutritionist, that eliminating feedlots from the program
17 is a mistake is that you have -- you have to choose one
18 or -- one or the other. Either the health and wellbeing
19 of the animal is important or having them in their
20 natural environment is important.

21 I would submit to you that the way that the
22 rules changes are written, that the health and wellbeing
23 of the animal is more important; otherwise, you wouldn't
24 have this "non-growing season" wording in there.

25 So if the health and wellbeing of the

1 animal is the more important of the two, then I think
2 that if, as Mr. Coleman and Mr. Moore submitted to you,
3 the U.S. consumer desires grain-fed beef, that the
4 feedlots are more well capable to look after the health
5 and wellbeing of the animal than in a grazing
6 supplementation system.

7 And here's the nutritional reason why. One
8 of the things that feedlots are experts at managing is
9 ruminal acidosis, the production of organic acids in the
10 rumen as a result of fermentation. The matters that
11 they're consuming, a forage diet or a high-concentrate
12 diet that produce organic acids, that's where their
13 energy comes from.

14 I agree with Mr. Moore that producing
15 highly marbled beef in a grazing-supplementation system
16 would be very challenging. A prime beef from that type
17 of system would be an anomaly. Doesn't mean you can't
18 try, however.

19 My concern is with the 30/70 split, that
20 you would have a situation where people were trying to
21 meet that demand, and in doing so, would feed 70 percent
22 of their dry matter intake as a concentrate in order to
23 get them to marble.

24 The difference between what a feedlot is
25 able to do and what you're able to do in a grazing

1 system is that in group-fed animals, there's a pecking
2 order, a social system. If they have their forage over
3 here that they're grazing and their concentrate, 70
4 presumably of the dry matter intake in a bunk that
5 they're supplemented with, who is going to have first
6 chance at that? It's the animal with the highest
7 pecking order.

8 We see this occasionally in cow/calf
9 nutrition where the boss cow, if you will, will consume
10 a majority of the supplement. They may overconsume that
11 70 percent of their diet so that that individual animal
12 may be getting 90 or 100 percent of their diet from that
13 supplement.

14 Ruminal acidosis in that situation is very
15 difficult to manage and I would submit to you not good
16 for the health and wellbeing of the animal.

17 Take the feedlot as a different scenario
18 where we mix an appropriate amount of roughage, not
19 30 percent, but it's closer to 10 percent, typically,
20 but it's in a complete diet. In other words, every bite
21 that that animal takes is the same so they're getting
22 all of the nutrients that they need for growth, but in
23 addition, that roughage value that they need to maintain
24 ruminal health.

25 So I would submit to you that if there

1 continues to be a consumer demand for highly marbled
2 beef, that if the health and wellbeing of the animal is
3 of greater importance than the grazing natural
4 environment -- I don't remember how it's worded
5 specifically -- that the feedlot is more well equipped
6 to do that than in a grazing supplementation strategy.

7 MR. MATHEWS: Thank you.

8 MR. McDONALD: Thanks.

9 MR. BAKER: Thanks. My name is Tim Baker
10 and I've been all across the country. I've managed
11 three different dairies -- or numerous dairies in three
12 different states, one in Michigan, one in Oregon and
13 then also -- I've been a little experienced down here in
14 learning this style.

15 In Oregon last year, for instance on the
16 pasture, I had my cows off for 60 days, and that wasn't
17 because of my choice, it was because of the weather
18 concerns. July 15th, we put the cows out for the first
19 time and they went over the top of their hocks just in
20 mud. So the soil conditions there, we could have late
21 rainstorms and everything where you just can't get them
22 out.

23 That year, it also started raining
24 September 15th, and so for forage chopping and
25 everything else, it was just a terrible year trying to

1 get any forage.

2 Same to do with the cows; we can't get the
3 cows out on the pasture near the amount of time as we
4 would like.

5 I like the grazing part. It gives us the
6 opportunity to increase the cow health a lot, and it
7 also drives down our costs for the ration. So it's in
8 our best interest, for the people I manage for, to have
9 those cows on pasture because it considerably drops our
10 cost of production maybe \$2.00, \$3.00 a hundred weight.
11 So for economical style that's good for us.

12 Also, I want -- as far as nutrition, I have
13 managed both conventional dairies, BST-free dairies,
14 organic dairies. BST, you're familiar with. BST is a
15 hormone. Those cows are more high strung and stressed
16 out a considerable amount of the time.

17 Now, our BST free, less stress, easier to
18 breed back, less problems in the herd, better
19 reproduction. And my experience as for the last four
20 years doing organics, that it far surmounts -- surpasses
21 the level of reproductive cow health. We have a lot
22 less problems.

23 We've dropped our cull outs down to 10
24 percent and it's all because of how we managed. And we
25 managed towards forages. We put more forages, more hay,

1 more silages, more pasture and less grain.

2 And by implementing the 30-percent dry
3 matter intake, I believe, is going to force not
4 necessarily me and how -- it's going to change our
5 perspective of how we feed. Just as to what he said
6 before, the rumen acidosis, I'm -- we're going to be
7 forced, as managers or whatever, to get the production
8 to what we used to get. And to do that, we're going to
9 have to increase our grain levels. So we're going to be
10 flirting with that balance beam on those cows of which
11 direction they're going to be going all the time.

12 Instead of now, we feed just -- we have a
13 higher increased forage levels and decreased our grain
14 to a lower amount and allowed that to totally control
15 what that cow is as far as her health.

16 And we implemented -- we have pasture. We
17 run the cows on pasture as much as possible and we use
18 that as a supplementation to the ration. We give the
19 cow various levels -- as someone else said, the stage of
20 lactation, you have huge different swings of dry matter
21 intake.

22 If you have fresh cows, you can have 30 to
23 40 -- 39 to 41 pounds of intake -- dry matter intake per
24 cow. And high cows, my high cows may eat 52 pounds dry
25 matter intake right now. In my tail-end cows, maybe 45.

1 So you're -- depends on what that cow --
2 what stage of lactation she's in as to how much she
3 actually takes in.

4 So along with all the new rules and
5 regulations is also increased level for paperwork for
6 me, especially on all of these levels. Last year, I
7 submitted 450 pages of ration changes. I change my
8 ration whenever I get a new supplement, a new kind of
9 hay, a new kind of forage, a new kind of whatever. So
10 I'm paying close attention to the health of that cow
11 because it's in my best interest.

12 And so the only way that I can do this and
13 guarantee you that I'm getting a 30-percent dry matter
14 intake is through -- really, really strict for me paying
15 attention to every little detail. And to get the
16 30 percent -- I mean, there -- we'll have days that we
17 won't -- we won't have any pasture because of the rain,
18 necessarily large amounts of rain or differing
19 conditions, and you're talking a huge swing in those
20 cows metabolically.

21 You know, we might have wet silage. You
22 know, say the pasture is really wet compared to dry feed
23 that you're feeding and that change inside that cud of
24 that cow is really going to vary from day to day, so
25 that can be causing nothing but problems. So if you

1 take that on top of the 30-percent dry matter intake and
2 you're feeding more grains to get more production of the
3 milk, you're going to have a lot more health problems
4 with your cows. It will be a lot worse stress wise.

5 So I'm concerned on that -- on that level
6 because I believe in the organic way and then I've seen
7 the increased production. I see it -- my herds -- I had
8 a herd in Oregon, like I said, it's a larger herd, and
9 we had 70 pounds of milk production per cow, and it was
10 the healthiest group of cows.

11 I have -- my friends who are conventional
12 don't do that and we still have the pastures. So to --
13 to get to that -- to get that 30-percent dry matter
14 intake, I'm afraid that I'm going to lose a lot more
15 cows on increased culling, not as good of cow health.

16 And it's not that I'm not willing to try to
17 get to that, but at least allow us time to get to that
18 level. Let us develop our pastures. Let us acquire new
19 lands, if we need more land, to get the intake off the
20 pasture. At least give us a stage to get to that level
21 so --

22 I don't change my ration on my cows
23 overnight. It takes me -- you can ask my nutritionist.
24 I'm slower on when I get out to do it. It takes me
25 weeks to get out and do rations, especially if I'm going

1 completely off one forage or another.

2 So don't -- please don't ask me to switch
3 overnight to have 30 percent the next day.

4 So thanks.

5 MR. MATHEWS: Thank you.

6 Next? Going once, going twice. I guess
7 there's no more commenters.

8 Well, I think that some of the messages
9 that I'm clearly receiving is: Get rid of sacrificial
10 pasture. As with some other areas, you're seeking a
11 definition for -- or a rule making regarding grazing
12 season rather than growing season. The water fencing
13 issue clearly does not work for the beef industry. And
14 for the dairy guys, the 30 percent, they find that to be
15 pretty hard to reach. For beef guys, that wouldn't be
16 an issue because you've got them out on the range
17 anyways.

18 MR. COLEMAN: No, no, no. I don't think
19 that's true.

20 MR. MATHEWS: Mel?

21 MR. COLEMAN: I think the way that the rule
22 is written --

23 MR. MATHEWS: Come on. I'm not talking --
24 finish feeding would be a different issue.

25 MR. COLEMAN: The way that the rule is

1 written, I don't know, in the different rangelands that
2 we're on, that you could go around and actually regulate
3 that because we may have cattle that are on some BLM
4 land that's got, one year, a lot of a Grama grass which
5 is very high in protein, great for the animals. You've
6 got another one that are in creek bottoms.

7 And so I think that the whole issue -- I
8 think that the beef cattle guys are against that entire
9 rule, or should be, because in order to align ourselves
10 with what the BLM wants to do, what -- what -- when we
11 work with the forest service, what the forest service
12 wants us to do, and then just in managing our own
13 grasslands, animal welfare and animal wellbeing are
14 paramount, but the environmental condition of the lands
15 are such that I just think that it's a rule that's just
16 not necessary.

17 And in certain parts of the year, if you
18 don't get any rainfall in the summertime -- and maybe
19 some of the Texas guys on the desert lands can talk to
20 this much better than I can. But if we have a very,
21 very small amount of water in the middle of the summer,
22 you get these conditions in the middle of the summer
23 that you're not going to reach that level, you're not
24 going to reach the 30 percent level in a lot of
25 situations.

1 MR. MATHEWS: What else are you feeding
2 besides the range?

3 MR. COLEMAN: In the summertime?

4 MR. MATHEWS: Yeah.

5 MR. COLEMAN: In summertime -- summertime,
6 we're not feeding. Okay. In the wintertime, what we'll
7 do is we'll supplement. We'll supplement with alfalfa
8 hay or cottonseed cake or -- mostly alfalfa hay.

9 MR. MATHEWS: Yes?

10 MR. REEB: If I may, I think that -- I
11 think that ignores a drought situation to require that a
12 minimum of 30 percent be consumed from rangeland. There
13 are -- especially in this country, there are times when
14 there's simply -- well, let's say there's nothing to be
15 grazed, but grazing would do harm to the range
16 condition, and so you will see a hay feeding and
17 supplementation during summer times because that operator
18 has two options, he can either sell his cows or he can
19 find something for them to eat.

20 MR. MATHEWS: So growing season becomes
21 important at that point?

22 MR. REEB: Well, it may be the growing
23 season. But if there's no water, it doesn't mean
24 anything is growing.

25 MR. MATHEWS: Because of the drought. Okay.

1 MR. COLEMAN: Grazing season.

2 MR. MATHEWS: Grazing season, right.

3 MR. DeBERRY: If I could make a comment on
4 that real quick. First off to summarize what I thought
5 I heard you say about the -- in the summary points, I
6 don't know that the fencing off water is any different
7 for dairy than it is beef. It's a problem for both.
8 And it's -- I think it affects both the exact same way.

9 With regard to this dry matter intake, I
10 mean, sure, you can take -- you can make attempts at
11 trying to tweak it here, change growing to grazing and,
12 you know, maybe add in a dormancy trigger for certain
13 grass for certain range conditions, but you're still not
14 going to address the over -- the overall issue with --
15 there are unintended consequences to every government
16 regulation.

17 This one, as you've heard here today, has
18 more unintended consequences than you could shake a
19 stick at. I would submit to you that we have ways to
20 make a grass-fed claim. If you want to make a grass-fed
21 claim, go to the Food Safety Inspection Service. If
22 it's beef, they've got that process. If you want to do
23 it for milk and you need somebody to help you develop a
24 process, if you don't -- if you can't just come up with
25 your own label to say "this is grass fed", my gosh, come

1 to the Texas Department of Agriculture and we'll help
2 you come up with a label for that. Don't make it part
3 of organic.

4 Access to pasture is currently a
5 requirement for organic and we have ways, as a
6 certifying agency, to assure that.

7 I appreciate you coming down here and I
8 appreciate you listening to us and spending such long
9 periods of time with us here. I just don't want you to
10 miss the overall point that I believe this group is
11 trying to make, and I think that even some of those in
12 the northeastern states, in reading through the
13 transcript from the New York listening session, were
14 making as well, that -- you know, they say, "We like --
15 we like portions of this rule, but this may have gone a
16 little too far. Can you tweak this?"

17 We're saying "tweak those same things", but
18 we're also raising other unintended consequences that
19 come out of government regulation or government
20 regulations.

21 So again, thank you for coming here and
22 I -- I -- I'm -- I imagine everybody here is ready to
23 get out of here as much as you are. But thank you for
24 coming here and listening to us and please let us
25 know -- let the Department of Agriculture, anybody, know

1 if you have any follow-up questions from us. Thank you.

2 MR. MATHEWS: Okay. Thank you, Drew.

3 And somebody had some papers with them that
4 they left up here, so if you look and you notice you've
5 got some missing papers, they're right here.

6 I thank you all for coming and
7 participating. And, you know, the 80,500 comments have
8 been brought up a few times, but the thing there is that
9 those were from, in large part, people who aren't in
10 agriculture, and so it's -- that's why we're holding
11 these listening sessions so that we can hear from you,
12 the farmers and the ranchers.

13 And I really truly appreciate your coming
14 out here today and expressing your opinions and trying
15 to help us make this into a workable rule.

16 If there's nothing else --

17 MR. DEES: Sir, on your summary points, we
18 got a little sidetracked, but I'm pretty sure this group
19 is -- if not 100 percent, 99.9 against the prohibition
20 of dry lot/feedlot situation. You didn't address that
21 in your summary points and that's just huge in this
22 area.

23 MR. MATHEWS: Yeah, that's on my list.

24 MR. DEES: Okay. Well, you didn't
25 mention that and I wanted to be sure that you got that

1 point.

2 MR. MATHEWS: Actually, thank you for
3 bringing me back to my list --

4 MR. DEES: Okay. Thank you.

5 MR. MATHEWS: -- because I had some
6 questions for Mr. Dees. And if you want to come up
7 here, maybe we can discuss this one a little bit more.
8 I promise to keep it short.

9 MR. DEES: You're just trying to get even
10 with me, aren't you?

11 MR. MATHEWS: Say what?

12 MR. DEES: You're just trying to get even
13 with me.

14 MR. MATHEWS: No, I'm not trying to get
15 even with you. No. I truly appreciate all the
16 comments, even the one from the attorney that I totally
17 disagreed with.

18 You were mentioning -- on the feedlot
19 issue, you were talking about your experience where
20 there was, it seemed like, two systems of feedlot; one
21 with a higher concentration of animals, one with a lower
22 concentration of animals.

23 Can you go into a little more detail on
24 that and let me know if you have any ideas on -- should
25 feedlot come out in the final rule, if you have any

1 ideas on how we should be doing that?

2 MR. DEES: Well, my experience isn't near
3 what this guy's is over here. These guys are big in
4 their expert status.

5 But what we try to do, we kind of set our
6 own minimum square feet per animal and we try to have at
7 least 400 square feet.

8 And I'm not trying to suggest that's what
9 it should be.

10 But we just didn't have a problem with them
11 when we scatter them out and -- and then we changed the
12 ration a little bit. We started out with pretty much a
13 roughage ration and we never got over about 70 percent
14 on corn. We wanted enough other product in there that
15 that rumen would keep kind of working naturally.

16 And I'm not suggesting that that ought to
17 be the rule, but that's what we did and it just kind of
18 worked.

19 We had mostly English cattle in the
20 program. When we first started, we could sell anything
21 that was organic if it was tender. And we DNA'd animals
22 for tenderness genes and all this and that, but as
23 things progressed, it's kind of like what Charlie was
24 talking about, the consumer started demanding higher and
25 higher quality grades, and it pushed us into a different

1 type cattle.

2 We had to stay with the English-type cattle
3 and get away from, you know, the conventional
4 continental cattle.

5 I'm not trying to tell people what kind of
6 cattle to raise. But the consumer drives this thing on
7 the bottom line, and my position is real simple. It's
8 consumer and what he -- when I first got into organics,
9 there was a fellow told me something that keeps sticking
10 with me. He said, "Organics is not just what an animal
11 eats or doesn't eat or what it lays down on. There's an
12 ethic to it."

13 And I'm all for that. You know, we've had
14 some violations of that spirit and it's the reason some
15 of these things -- kick those guys out. Don't wimp out
16 on it like you did on one guy up north. We don't want
17 them. None of us here want any cheaters. But leave us
18 alone, let us take care of our animals and you won't be
19 ashamed of us. And that's all I have to say.

20 MR. MATHEWS: Thank you. I guess with
21 that, this session is over. And again, I thank you all
22 for coming. I really appreciate it.

23 * * * * *

24

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1 REPORTER'S CERTIFICATE

2 I, Janice Hoelting, Certified Shorthand Reporter in
3 and for the State of Texas, do hereby certify that the
4 above and foregoing contains a true and correct
5 transcription of all proceedings occurring in the
6 Listening Session held December 8, 2008, in Amarillo,
7 Texas, on proposed rule changes in 7 CFR Part 205 and
8 were reported by me.

9 I further certify that the total cost for the
10 preparation of this Reporter's Record is \$805.00 and was
11 paid by the USDA.

12 WITNESS MY OFFICIAL HAND this the _____
13 day of _____, 2008.

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